



**HILARY S. FRANZ**  
COMMISSIONER OF PUBLIC LANDS  
**IRRIGATED LEASE**

Lease No. 12-095036

**Section 1 Parties, Premises, Term, Use, and Payments**

Lessor: Department of Natural Resources ("State").

Southeast Region  
713 Bowers Road  
Ellensburg, WA 98926

509-925-8510  
[southeast.region@dnr.wa.gov](mailto:southeast.region@dnr.wa.gov)

Lessee: FRANK TIEGS, LLC ("Lessee").  
6610 W. Court Street Suite B  
Pasco, WA 99301

509-545-4545  
Frank Tiegs: [frank@ftiegs.com](mailto:frank@ftiegs.com)

**1.01 Property Description.** State hereby leases to Lessee the following described property ("Premises"), subject to the encumbrances and reservations, if any, as shown Exhibit 4: NW 1/4, NE 1/4, SW 1/4 of Section 15; all of Section 16; all of Section 21; NW1/4, SE1/4, SW1/4 of Section 26, NE1/4, SE1/4, SW1/4 of Section 28; NW1/4, SE1/4, SW1/4 of Section 30; NW1/4, SE1/4, SW1/4 of Section 32; NW1/4, SE1/4, SW1/4 of Section 34; all of Section 36, all within Township 7 North, Range 25 East, W.M., and all of Section 36, Township 7 North, Range 24 East, W.M., Benton County, Washington. Excepting therefrom the approximately 127.1 acre portion of the SE 1/4 of Section 36 Township 7 North, Range 25 East, and the approximately 50.5 acre portion of the SE 1/4 of Section 26, lying northerly and easterly of the crop circles depicted in hatch on attached map.

Containing 5,047.20 acres as shown herein by the Map of Premises in Exhibit 1G.

**1.02 Term.** This lease shall commence on \_\_\_\_\_ (Date of signature by State) ("Commencement Date"), and shall expire on December 31, 2043 ("Termination Date").

**1.03 Permitted Use, Rent, Taxes, and Assessments.** The Lessee shall use the Premises for the Permitted Use(s) identified below and no other. Lessee shall pay rent, subject to adjustment under Subsection 1.04, for the period on the due date and annually thereafter on January 1. Lessee shall pay all taxes, assessments, and utilities as required under Subsection 3.33.

<b>Period:</b> January 1 2019 through December 31, 2019			
<b>Payment Due Date:</b> Annually on December 1 preceding the period			
<b>Permitted Use</b>	<b>Acres</b>	<b>Description of Authorization</b>	<b>Amount Due</b>
Irrigated Agriculture	2,955.1	Development to irrigated row crops. Stepped rents based on the following rates: \$125.00 per acre for years 1 & 2 \$450.00 per acre year 3 and thereafter, subject to 1.03 a. Authorized Crops: Alfalfa, Cereal Grains, Corn, Onions, Peas, Potatoes, Timothy	See below table for amounts due for 2019* and 2020** rent. Rent at full development starting 2021: \$1,329,795.00
Conservation	938.60	Wildlife Habitat	
Non Production	1,153.50	Remaining Undeveloped Acres	

Payment Summary	Years 1 (2019)	Year 2 (2020)	Years 3 (2021) & thereafter*
Rental rate per acre	\$125.00	\$125.00	\$450.00
Irrigated Agriculture Acres	2,100	2,955.1	2,955.1
Subtotal	\$262,500.00	\$369,387.50	\$1,329,795.00
Leasehold Excise Tax (12.84% of Rent)	\$33,705.00	\$47,429.36	\$170,745.68
<b>Payment Required on Due Dates</b>	<b>\$296,205.00</b>	<b>\$416,816.86</b>	<b>\$1,500,540.68</b>

\*2019 acreage developed is an estimate. \*\*2020 payment will be adjusted to include difference owed if acres over 2,100 acres are irrigated in 2019.

**1.03 a. Power Cost Adjustment to Rent.** State shall deduct actual power costs from annual rent beginning with rent for the period of January 1, 2021, through December 31, 2021. The allowed deduction shall never exceed the annual rent amount or be credited to future rent. Annually, by September 1, Lessee shall provide State documentation of actual power costs per acre for prior crop year.

**1.03 b. Rental Offset for Development Costs.** State will offset Lessee expenditures, at five percent interest annually on remaining outstanding balance, for CWPD Water System improvements, State-owned Improvements, and land and road development required under this lease (together, "Development Costs") by further reducing rent under this lease and reducing rent under the following ten additional leases held by Frank Tiegs: 60-C67115; 60-A71344; 12-B71244; 12-087464; 12-A73505; 12-091908; 60-092772; 12-A79611; 12-A81331; 12-089984. Rent shall be reduced for each rental period necessary to offset Lessee's actual Development Costs. The parties estimate Development Costs will be approximately \$22,844,942.00.

Lessee shall prepare and maintain accurate records in accordance with applicable law and prudent business practices. Lessee shall maintain a detailed accounting of its actual costs incurred pursuant to the improvements and development required under this Lease. Development Costs shall be supported by source documents, such as receipts, invoices, or similar documents, through completion of construction and development. Lessee shall retain such records for at least 7 years following the date such costs are submitted to State. Final costs shall be submitted to State on a schedule to be determined by State and Lessee.

**1.04 Rent Adjustment.** Rent beginning with year three (2021), as reduced under Subsections 1.03 a. and b., shall be adjusted annually based on an adjustment rate derived from Producer Price Index for Farm Products, Series Id: WPU01 ("PPI-FS"), not seasonally adjusted, data published by the U.S. Bureau of Labor Statistics (BLS), according to the method set forth in Exhibit 3. If the PPI-FS index ceases to be published, State may substitute a comparable index as may then be published by the same or a comparable government agency. The adjusted rent shall be effective as of the first day of the current escalation month as defined in Exhibit 3.

**1.05 Change in Permitted Use.** Any change in Permitted Use, including but not limited to changes in acreage, crops, or crop rotations, requires prior written approval by State and will require an update to the Plan of Development & Operation under Subsection 2.02. Change in Permitted Use will be accompanied by a rental evaluation and may result in a change of rent and other amounts due under Subsection 1.03.

**1.06 No Counterclaim, Setoff, or Abatement of Rent.** Rent and all other amounts payable by Lessee shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction, or defense and without abatement. Rent shall not be reduced based on Lessee's failure to fully develop the Premises according to the approved Plan of Development & Operation as required under Subsection 2.02. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged, or otherwise affected unless authorized in writing by the State.

## **Section 2 Land Management**

**2.01 Management.** Lessee shall care for the Premises in a manner that meets or exceeds industry standards, including but not limited to following all state and federal laws pertaining to seeds planted, proper use of chemical inputs, and preventing introduction of, and controlling, pests, weeds, and disease. With respect to Lessee's use of the Premises, Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements (regardless of ownership) in good order, repair, and safe condition for the safe conduct of any activities or enterprises conducted on the Premises under this lease, and keep and maintain the Premises and all improvements in a clean, sanitary, and attractive condition.

**2.02 Plan of Development & Operation.** Lessee shall develop and operate on the Premises according to the Plan of Development & Operation (Plan) set forth in Exhibit 1. Proposed changes to the Plan by Lessee require State's prior written approval.

### **2.03 Irrigation System Development.**

**1. CWPD/DNR Agreement.** Irrigation water will be delivered to the Premises under the Columbia Water and Power District (CWPDP) and DNR Irrigation Water Delivery & Infrastructure Improvement Agreement ("CWPDP/DNR Agreement" or "Agreement"), attached as Exhibit 1D. Improvements to the CWPDP river pump station and penstock ("CWPDP Water System") authorized under the Agreement will increase water available for delivery to CWPDP stakeholders, defined in Section 2.2 of the Agreement, and will enable diversion, delivery and use of water under State's Water Right, defined in Subsection 2.10 of this lease.

**2. Lessee Performance Under CWPDP/DNR Agreement.** Lessee's agreement to furnish and install the contracted improvements to the CWPDP Water System, the irrigation facilities necessary to deliver water to the Premises from the tie-in point on the CWPDP



Water System, and the on-farm irrigation facilities, and to make full beneficial use of water under State's Water Right, is material to this lease. State passes its rights and obligations under the CWPDP/DNR Agreement to Lessee through this lease, with the exceptions of Section 2 Term; Right of First Refusal, Subsections 3.1 – 3.4 relating to payment of the Delivery Fee, and Subsection 4.11 relating to Ownership of DNR Infrastructure, which shall be as specified in this lease. Except for the foregoing limitations, Lessee hereby agrees to exercise State's rights and perform State's obligations under the Agreement, as well as be subject to and comply with all terms and conditions of the Agreement, as it now reads or as hereafter modified, and whether or not expressly specifically referenced in this lease.

**3. Priority in Case of Conflicts.** In case of any inconsistency, conflict or ambiguity between this lease and the CWPDP/DNR Agreement, the Agreement shall control. Information identified in the Agreement and not the lease, and vice versa, shall not be considered a conflict or inconsistency.

**4. Lessee's Sole Cost.** Lessee shall furnish and install all improvements on the CWPDP Water System, irrigation facilities branching off from the CWPDP Water System necessary to deliver water to the Premises, and all on-farm irrigation facilities, at Lessee's sole cost and expense. State will not pay for any portion of the work or improvements unless specifically agreed to in this lease or otherwise in writing.

**5. Permits.** Lessee shall obtain all applicable licenses and permits necessary for the irrigation system development required under this Section 2.

**2.04 Completion Time.** Lessee shall diligently carry out the construction of all improvements required in Subsection 2.05 and 2.06 with adequate forces to complete all work within the scheduled time set forth herein. Failure by Lessee to timely complete work as required herein shall be a default of this lease. Improvements to the CWPDP Water System and all other improvements located off of the Premises shall be determined complete upon full satisfaction of the terms and conditions under the Paterson Project Completion Language, attached as Exhibit 1E, pertaining thereto. All on-farm improvements shall be determined complete when State approves the work and accepts the As-Built plans required under Subsection 2.06 7.

**1. CWPDP Water System Improvements.** Subject to restrictions CWPDP may impose on construction activity due to irrigation needs of its stakeholders, as set forth in Subsection 2.05 3, Lessee shall complete all improvements to the CWPDP Water System required under Subsection 2.05 on or before March 15 of the year following the Commencement Date provided Lessee has a minimum of nine months and one full winter work window to complete the work, consistent with Exhibit 1E. If the Commencement Date does not provide the required minimum time period described herein, the project completion date shall be March 15 of the following year. Failure to complete the improvements to the CWPDP Water System by December 31, 2021, may result in termination of the CWPDP/DNR Agreement.

2. **Irrigation System from CWPDP Tie-In to Horrigan Road.** Lessee shall complete the irrigation system from the CWPDP tie-in to Horrigan Road as required under Subsection 2.06 1 within the timeframe set forth in Exhibit 1E. Failure to complete these improvements by December 31, 2021, may result in termination of the CWPDP/DNR Agreement.
3. **On-Farm Irrigation System.** Lessee shall complete the on-farm irrigation system as required under Subsection 2.06 2 prior to the development schedule deadline set forth in the State's Water Right, as such may be extended by the Washington State Department of Ecology.

## **2.05 Improvements to CWPDP Water System.**

1. **Access to CWPDP Property.** Access to the areas of the CWPDP Water System, for purposes of design, construction, and installation of the CWPDP Water System improvements under this Subsection 2.05 and irrigation facilities set forth in Subsection 2.06 1 shall be on the terms and conditions set forth in Section 6 of the CWPDP/DNR Agreement. The CWPDP Water System and other CWPDP property is strictly "as is, where is" and Lessee hereby agrees to assume all risks relating to its entry upon, use of and all activities on the CWPDP Water System and any other CWPDP property. Lessee shall repair any damage done to CWPDP property as provided in Section 6 of the Agreement.
2. **Plans and Specifications; Construction Oversight.** Pursuant to a contract with the State, Gary Weatherly, P.E., J-U-B Engineers, Inc., has designed plans and specifications ("Plans and Specifications") for the improvements to the CWPDP Water System necessary to expand CWPDP maximum pumping capacity to 116,298 gpm at optimal water and operation levels. Lessee shall furnish and install CWPDP Water System improvements in strict accordance with the Plans and Specifications and all requirements of the CWPDP/DNR Agreement. Lessee shall not modify the Plans and Specifications without State's and CWPDP's prior approval. Lessee hereby agrees that Gary Weatherly and other staff of J-U-B Engineers, Inc., as may be agreed to by CWPDP and State, will oversee construction and installation of the improvements to the CWPDP Water System.
3. **Construction Schedule; No Interference with CWPDP Irrigation.** Construction of the CWPDP Water System improvements shall not begin until final Plans and Specifications are approved by State and CWPDP. Such approval shall not relieve Lessee of any of its obligations under this lease or result in liability of CWPDP or DNR concerning the Plans and Specifications.

Lessee shall develop a construction schedule with input and agreement of CWPDP and State to complete construction of the CWPDP Water System improvements.

Lessee shall ensure no work interferes with CWPDP's ability to use the CWPDP Water

System to pump at least 88,698 gallons per minute at any time during the irrigation season, which typically runs between the middle of February and the middle of November. Lessee shall either coordinate the activities of all contractors to avoid delays or contract with a third-party to do so. If at any time after work begins CWPDP notifies Lessee or DNR that such activities will interfere with its ability to use the CWPDP Water System to meet irrigation needs of its stakeholders, Lessee shall promptly cause the CWPDP Water System to be returned to a condition which meets the irrigation needs of the CWPDP stakeholders at no cost to CWPDP or DNR.

4. **Responsibility for Contractors and Subcontractors.** Lessee shall ensure all work is performed in compliance with all applicable laws and permits. Lessee shall require all contractors and subcontractors to adhere to a standard of care at least as high as that ordinarily observed by contractors performing work of similar scope and complexity in Washington State. Lessee shall ensure that work is performed by persons and entities with appropriate expertise and experience in the work being performed. Lessee shall include the Plans and Specifications as terms and conditions of the contract it enters into with the contractor selected to perform the work.
5. **Contractor and Subcontractor Qualifications.** Lessee shall submit the name of the contractor and the contractor's qualifications to the State for approval prior to commencement of any of the work. Contractors and subcontractors must meet all of the following criteria in order to be approved by the State:
  - a. The contractor shall not have been debarred by any public agency within the last two (2) years in accordance with RCW 39.06.010 and RCW 39.12.065(3).
  - b. The contractor must have a certificate of registration in compliance with RCW 18.27 and a current state unified business identifier number (UBI) at the time of submittal for approval to State;
  - c. The contractor must be bonded as required under RCW 18.27, have industrial insurance coverage for the contractor's employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW.
  - d. The contractor shall have completed at least one project involving similar pump station work;
  - e. Lessee must submit documentation of the contractor's qualifications for these requirements to DNR that includes: (i) the name of the project submitted for experience; (ii) the name of the project owner; (iii) the name and phone number of the project owner's contact person; (iv) a brief description of the project work; (v) the contract completion date; (vi) the date of actual completion of the project, and (vii) the percentage of the cost of the work performed with the contractor's own forces.
6. **Contractor Indemnification and Insurance.** Lessee shall cause all contractors and subcontractors performing work related to the improvements on the CWPDP Water

System to agree to the indemnification, hold harmless and defense requirements set forth in Subsection 3.09 of this lease and maintain the following insurance policies:

- a. Worker's Compensation Insurance in accordance with all applicable laws which shall cover all contractors' personnel performing work hereunder;
- b. Employer's Liability Insurance, in the amount of \$1,000,000 per occurrence;
- c. Comprehensive General Liability including coverage for bodily injury and property damage with coverage of not less than \$2,000,000 per occurrence;
- d. For engineers and design professionals, Professional Liability Insurance with coverage of not less than \$2,000,000 per occurrence; and
- e. Automobile Liability Insurance with a combined bodily injury and property damage limit of not less than \$1,000,000 per occurrence.

All certificates of insurance (other than workers compensation and professional liability) shall list CWPDP as an additional insured. All insurance policies shall be endorsed to waive all rights of subrogation against CWPDP.

The minimum insurance requirements set forth in this subsection shall not constitute a limitation of liability or the indemnity obligations of Lessee's contractors or subcontractors to DNR, CWPDP, or CWPDP stakeholders.

7. **Warranty.** Lessee shall warrant, and require all contractors to warrant, that (i) all materials and equipment furnished as part of the CWPDP Water System improvements will be of good quality and new unless CWPDP and State permit otherwise; and (ii), the improvements will be free from all defects and will conform to the final Plans and Specifications approved by DNR and CWPDP and other requirements stated in the CWPDP/DNR Agreement.
8. **License to Documents.** Lessee shall require any contractor or subcontractor performing work related to the improvements to grant CWPDP an irrevocable, perpetual license to use any drawings, plans, specifications and similar documents related to the improvements for the purpose of maintaining, operating, altering or adding to the CWPDP Water System.
9. **Ownership of Improvements to CWPDP Water System.** All improvements to the CWPDP Water System shall be the sole and exclusive property of CWPDP or its successor, free of any liens and encumbrances. These improvements shall constitute part of the CWPDP Water System upon their installation in and on CWPDP property.

## **2.06 Irrigation Facilities from CWPDP Tie-In to Premises; On-Farm Irrigation Facilities.**

1. **Irrigation System from CWPDP Tie-In to Horrigan Road.** Lessee shall furnish and install the irrigation system necessary to bring water from the CWPDP Water System to the delivery point on Horrigan Road, in strict accordance with the Plans and

Specifications, the Paterson Project Completion Language, and the CWPD/DNR Agreement, including installation of a metering device as required under Subsection 5.4 of the Agreement. Access to the land on which the irrigation system from the CWPD Water System to Horrigan Road will be located is provided under the easements set forth in Subsection 3.05.

2. **On-Farm Irrigation System.** Lessee shall furnish and install the on-farm irrigation system in strict accordance with plans prepared by the Lessee and approved by the State as provided herein. These plans shall be based on the guidelines set forth in Exhibit 1 under DNR Agriculture Program Water System Specifications for On-Farm Irrigation System. Lessee shall provide State drawings, specifications and other submittals necessary for State to determine that Lessee's plans will result in a system capable of delivering the required water at the necessary heads to irrigate the Premises reliably, efficiently, and for an appropriate period of time. State and Lessee shall meet in one or more preconstruction conferences to review Lessee's plans. Lessee may request alteration or deviation from the guidelines at these conferences.
3. **Changes.** Any modifications to previously approved plans must be approved by State in writing. No work shall begin until a complete set of plans have been approved by State.
4. **Contractor Qualifications.** Lessee shall ensure that all contractors and subcontractors meet the requirements set forth in Subsection 2.05.
5. **Ownership.** Ownership of the irrigation facilities installed under this Subsection 2.06 shall be as set forth in Exhibit 2.
6. **Access.** State may make inspections to confirm Lessee's conformance with approved plans and specifications. No work shall be backfilled or otherwise hidden without approval of State. If construction is not in accordance with approved plans and specifications, Lessee shall immediately take actions as required to correct any deficiency.
7. **As-Built Plans.** Lessee shall provide to State as-built plans within 30 days of completion, such plans to be in acceptable form to State as to the degree of specificity required by State.

**2.07 Construction Site Clean Up.** Lessee shall ensure all construction or installation areas are maintained in a safe and orderly manner. Lessee shall remove all waste, rubbish, tools, equipment and surplus materials from CWPD's property upon completion of the work on the improvements to the CWPD Water System, and from the easement areas and the Premises upon completion of the work located thereon. Lessee shall return the surface of the easement areas to pre-construction condition or better as required under each easement.

**2.08 Compliance with Laws.** Lessee shall conform to all applicable laws, rules and



regulations of any public authority affecting all irrigation system development under Subsections 2.05 and 2.06. Lessee shall provide to State, within ten (10) days of receipt of same, a copy of any notice received from any public authority which indicates that Lessee is not in compliance with applicable laws, rules and regulations. In addition, Lessee shall bear, at Lessee's sole expense, any costs associated with bringing the work or location into compliance, including any attorneys' fees, costs, fines or penalties. Lessee shall take all reasonable precautions to protect against fire, and make every effort to report and suppress such fires as may occur.

**2.09 Maintenance and Operation.** Lessee shall operate and maintain the irrigation facilities installed under Subsection 2.06 of this lease in good working order and operating condition at its sole cost and expense. Failure to maintain and operate the system in good working order shall be a default of this lease. If State must restore the irrigation facilities to good working order, Lessee shall reimburse State its costs and expenses as well as interest as required under Subsection 3.03. In addition to maintenance, Lessee shall be responsible for performing mitigation measures necessary to maintain or restore water deliveries under the circumstances set forth in Subsection 5.3 of the CWPDP/DNR Agreement. Lessee shall obtain the written approval of State prior to performing such mitigation measures.

## **2.10 Water Supply.**

- 1. Identification of Water Right.** State's water permit, No. S4-25639(A)P, as modified under change application CS4-25639(A)@2 ("State's Water Right"), included in Exhibit 1, shall be used by Lessee to irrigate the Premises. The term "State's Water Right" shall encompass the water right certificate upon issuance by the Washington State Department of Ecology when the water right has been perfected. Nothing in this lease is intended to transfer or otherwise limit State's ownership of State's Water Right. Lessee acknowledges that any surplus water resulting from Lessee's conservation or other water management practices belongs to State and may be transferred or used for other purposes at State's option, so long as it does not prevent Lessee from using the water needed for the Permitted Uses in Subsection 1.03.
- 2. Water Delivery Under CWPDP/DNR Agreement.** Water authorized under State's Water Right will be diverted from the Columbia River and delivered under the terms and conditions of the CWPDP/DNR Agreement, subject to priorities and potential limitations on volume set forth in the Agreement.
  - a. Annual Delivery Fee.** State shall pay the Annual Delivery Fee, as such may be adjusted under the Agreement.
  - b. Operating Costs.** Lessee shall pay amounts due as contribution to Operating Costs, in strict compliance with the terms of Section 3.5 of the CWPDP/DNR Agreement. Late payments by Lessee will be subject to assessment of interest at 10 percent per annum and may subject Lessee to other remedies, under Subsection 3.6 of the Agreement, and under this lease.



- c. **Pumping Coordination.** Lessee shall communicate its anticipated water needs on a weekly basis to CWPDP at the time and in the format specified by CWPDP.
3. **Lessee's Obligations to Protect State's Water Right.** Lessee shall take every action necessary to comply with the terms and conditions of State's Water Right and to put all water Lessee is permitted to use under the terms of this lease to its full beneficial use. Lessee shall not take action that could cause relinquishment of State's Water Right, as described in RCW 90.14.180 and RCW 90.14.140, unless State approves in writing of any such action. Lessee shall avoid taking any action to harm or degrade the water quality source or otherwise negatively affect the quantity or quality of State's Water Right from the point of withdrawal to the place of use. Lessee acknowledges that failure to do one or more of the following violates Lessee's obligation to protect State's Water Right: (a) comply with all provisions in this lease; (b) promptly advise State of any diminution in water use by Lessee; and (c) cooperate and not interfere with State's efforts to perfect water authorized under State's Water Right and/or to prevent relinquishment of any water Lessee is authorized to use under this lease.
4. **Limits on Lessee's Use of State's Water Right.** Lessee shall use State's Water Right for irrigation purposes only, in compliance with the CWPDP/DNR Agreement, State's Water Right, and Subsection 1.03 of this lease. Lessee shall take all steps necessary to enable State to perfect State's Water Right by fully developing the irrigable acres. In the event Lessee makes any changes to its irrigation practices or in water management practices described below in Subsection 2.10 5, Lessee shall notify State within twenty (20) days of such change. Upon receiving such notice, if State determines that Lessee's action puts State's Water Right at risk, State may take any action deemed necessary to protect State's Water Right, including offering any portion unused by Lessee to another party, and Lessee shall cooperate with State to effect any necessary transfer or name change to another party of the unused portion.
5. **Water Management Practices and Conservation.** Lessee shall notify State of any water management practices that may result in surplus water being available, through any means, including, but not limited to, crop rotations to lower water duty crops, better conservation practices using more efficient water application methods, or other means, within twenty (20) days of implementing such practices. Lessee shall notify State of any surplus water available as a result of on-site water management practices as soon as identified by Lessee.
6. **State Does Not Guarantee Water Availability, Water Right, Water Quantity, or Water Quality.** State makes no representation to Lessee of water availability, water quantity or quality, or any other representation to guarantee the use of water under State's Water Right. Lessee hereby releases and forever discharges State, its officers, directors, agents, and employees from any and all claims or causes of action arising from Lessee's use of State's Water Right, including, but not limited to water availability, quality or quantity of any water or water supply and any other water-

related problems such as, but not limited to, lack, contamination, failure, excess, shortage, interruption or stoppage of water.

- 7. No Right to Transfer or Assign State's Water Right.** Lessee shall not use State's Water Right on lands other than the Premises, nor attempt to change any of the elements of State's Water Right, including but not limited to, changes in the place, purpose, point of withdrawal, or any other action that would require approval from Ecology, without State's prior written approval.

**2.11 Reporting.** A crop water duty report and water use measurement reportcrop water duty report and water use measurement reportcrop water duty report and water use measurement reportcrop water duty report and water use measurement report shall be submitted to State substantially in the format provided in Exhibit 1 not later than November 30<sup>th</sup> of each year. State may require additional water use reporting during the course of the water right development schedule.

### **Section 3 General Provisions**

**3.01 Condition of Premises and State Owned Improvements.** Lessee accepts the Premises "as is, where is." Lessee has inspected the Premises and acknowledges that it is in good and tenantable condition and suitable for the Permitted Use. The State has no obligation to make any repairs, additions, or improvements to the Premises and expressly disclaims any warranty that it is suitable for such Permitted Use.

#### **3.02 Limitations on Use.**

1. Lessee shall conform to all applicable laws, rules, and ordinances of any public authority affecting the Premises. Lessee shall provide to State within ten (10) days a copy of any notice that Lessee is not in compliance with those laws, rules, and ordinances. Lessee shall bear sole responsibility for any violations, including the expense of bringing the Premises into compliance, including any attorneys' fees, costs, fines, or penalties. Lessee shall be solely responsible for securing any permits or approvals necessary for Lessee's activities on the Premises. Lessee shall remove no valuable materials as defined in RCW 79.02.010, including but not limited to timber, without prior written approval of State.

2. Lessee shall take all reasonable precautions to protect the Premises from fire and make every effort to report and suppress such fires as may occur.

3. Lessee shall use only electric fences approved by Underwriters Laboratories.

**3.03 Interest Penalty for Past-Due Rent and Other Sums Owed.** Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the Commencement Date), until paid, on rent or other sums owing under the terms of this

lease, commencing the date such rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to satisfy or pay under this lease, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

**3.04 Right to Inspect.** State may at any time enter and inspect the Premises and improvements constructed thereon. In addition, Lessee shall allow State's employees access to buildings and facilities during regular business hours of Lessee's operations or at other times as may be requested by State.

**3.05 Access/Easements.**

**1. Existing Roads.** Lessee is granted a non-exclusive easement to use existing roads on the Premises for permitted operations under this lease. Easement locations and terms are set forth in Exhibit 1. Lessee shall comply with all terms of State's easements used by Lessee to access the Premises. State may build roads and grant easements to others to use new and existing roads.

**2. Penstock Pipeline.**

Lessee shall comply with and is subject to the terms and conditions of pipeline utility easement DNR Nos. 55-095032 (pending), 55-095033, 55-095034 (pending) and 55-095035, and that franchise agreement with Benton County filed under DNR No. 92-097393 (pending), for construction of irrigation penstock from the DNR tie-in point to Premises within areas shown as Penstock Route on the Paterson Project Map, attached in Exhibit 1.

**3. Pipeline System for Premises.** Lessee shall comply with and is subject to the terms and conditions of easement DNR No. 55-001594, providing for access and irrigation pipeline installation between portions of the Premises in Sections 26 & 36, Township 7 North, Range 25 East W. M.. State shall acquire any additional easements, as necessary to interconnect pipeline between non-contiguous parcels within the Premises.

**4. Additional Easement.** State is responsible, at its sole cost, to acquire any other easements or permits necessary to construct a system to convey the State's water throughout the Premises.

Lessee shall comply with all terms of the easements, including but not limited to notice to grantor, restoration, and payment for any damages.

**3.06 Uses.** State reserves the right to lease or otherwise encumber the Premises for other uses that will not interfere with Lessee's Permitted Use. State further reserves the right to sell, lease, or otherwise dispose of valuable materials in a manner consistent with Lessee's right to use the Premises for its Permitted Use.

**3.07 Public Hunting, Fishing and Nonconsumptive Wildlife Activities.** The Premises shall be open and available to the public for purposes of hunting, fishing, and nonconsumptive wildlife and other activities, unless closed to public entry because of fire hazard or a closure is authorized

in writing by State, as provided in RCW 79.10.125. When closure is authorized by State, Lessee shall post the Premises with approved signs to inform the public of such closure. Lessee is not required to post signs when the closure is for fire hazard.

**3.08 Early Termination.** State may, at its sole discretion, terminate this lease upon Lessee's written request if Lessee has satisfied all outstanding rents, duties, and obligations. Improvements will be disposed of under the terms of Subsection 3.15.

**3.09 Indemnity; Limitations on Liability.**

**1. Indemnity.** To the fullest extent permitted by law, Lessee and all of Lessee's contractors and subcontractors shall indemnify, defend and hold harmless the State, CWPDP, CWPDP stakeholders, their tenants, and each of their successors and assigns (collectively, "Indemnitees"), from any direct or third-party losses, damages, liabilities, claims, judgments, penalties, costs or expenses (including reasonable attorneys' fees and costs) arising in whole or in part from Lessee's, or Lessee's contractor's or subcontractor's, negligent acts or omissions, or breach of any warranty or contract obligation. Lessee shall cause CWPDP, CWPDP stakeholders, their tenants, and each of their successors and assigns to be third party beneficiaries of the all applicable contracts and subcontracts for the purpose of enforcing this indemnification right. No work related to the CWPDP Water System shall begin until Lessee provides DNR and CWPDP a copy of an executed contract or contracts for such work that contains provisions that fully comply with the requirements of this subsection. This subsection shall not constitute a limitation on Lessee's liability or a restriction on claims available to any person or entity. Pursuant to RCW 4.24.115, if such direct or third-party losses, damages, liabilities, claims, judgments, penalties, costs or expenses (including reasonable attorneys' fees and costs) result from the concurrent negligence of the Lessee or Lessee's contractors or subcontractors, and the Indemnitee(s), the indemnification required herein shall be valid and enforceable only to the extent of the Lessee's or the Lessee's contractor's or subcontractor's negligence. Lessee waives, and shall cause its contractors and subcontractors to waive, immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the Indemnitees.

**2. Limitations on Liability: CWPDP/DNR Agreement; Horrigan Farms, Inc. Easement.** Lessee hereby agrees to the limitations on liability set forth in section 8 of the CWPDP/DNR Agreement. Lessee also agrees to the limitations on liability of easement grantor, Horrigan Farms, Inc., its permittees as defined therein, and its successors and assigns, set forth in Easement No. 55-095035, attached in Exhibit 1F.

**3.10 Insurance.**

**1. Insurance Requirements for Lessee's Contractors and Subcontractors.** Lessee shall comply with the insurance requirements in Subsection 2.05 6 relating to Lessee's contractors and Subcontractors.

## **2. Insurance Requirements for Lessee.**

a. Lessee shall at all times during the term of the lease, at its expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance is a breach of this lease. All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. If an insurer is not so admitted, all insurance policies and procedures for issuing the insurance policies must comply with RCW 48.15 and WAC 284-15.

All certificates of insurance, other than worker's compensation and professional liability, shall list CWPB and State, including its elected and appointed officials, agents, and employees, as additional insureds. Before starting work under this lease, Lessee shall, at State's request, furnish State at its Region Office with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements under this lease.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to in the certificate(s), in accordance with the following specifications:

1. Insurers subject to RCW 48.18 (Admitted and Regulated by the Insurance Commissioner): The insurer shall give forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, State shall be given ten (10) days advance notice of cancellation.
2. Insurers subject to RCW 48.15 (Surplus lines): The State shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, State shall be given ten (10) days advance notice of cancellation.

Sublessee(s) must comply fully with all insurance requirements stated herein. Lessee shall include all sublessee(s) as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each sublessee. Failure of sublessee(s) to comply with insurance requirements does not limit Lessee's liability or responsibility.

All insurance provided in compliance with this lease shall be primary as to any other insurance or self-insurance programs afforded to or maintained by CWPB or State. Lessee waives all rights against CWPB and State for recovery of damages to the extent those damages are covered by general liability or umbrella insurance maintained pursuant to this lease. If Lessee is self-insured, evidence of its self-insured status shall be provided to CWPB and State, and upon receipt by State, shall be automatically incorporated into this lease. If requested by State, Lessee shall describe its financial condition and the self-insured funding mechanism. By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Lessee. Such coverage and limits shall



not limit Lessee's liability under the indemnities and reimbursements granted to CWPD and State in this lease.

The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

**Commercial General Liability Insurance.**

<b>Description</b>	<b>Commercial General Liability (CGL) Insurance</b>
General Aggregate Limit	\$4,000,000
Each Occurrence Limit	\$2,000,000

Lessee shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than the amounts listed above per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on Insurance Service Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of Premises, operations, fire liability, independent contractors, sublessees, products-completed operations, personal injury, and advertising injury and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insureds (cross liability) condition.

**Employer's Liability Insurance and Workers' Compensation Insurance.** Lessee shall buy employer's liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. Lessee shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Lessee and employees of any sublessees. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this lease. Except as prohibited by law, Lessee waives all rights of subrogation against CWPD and State for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability or commercial umbrella liability insurance. If Lessee or sublessee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Lessee shall indemnify State. Indemnity shall include all fines, payment of benefits to Lessee, sublessees, and employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such.

**Business Auto Policy.** Lessee shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance, with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01 or substitute liability form providing



equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Lessee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability insurance or commercial umbrella liability insurance.

Insurance for State-Owned Equipment and Structures. Lessee shall buy and maintain property insurance covering all real property, fixtures, equipment, and Lessee's improvements and betterments, associated with Lessee's use of Premises. Such insurance shall be written on an all risks basis and, at a minimum, cover the perils insured under ISO special causes of loss form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductions. Any coinsurance requirement in the policy shall be waived. State shall be included as an additional insured and loss payee under the property insurance policy.

Lessee shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering real property, fixtures, equipment, and Lessee's improvements or betterments from loss or damage caused by the explosion of steam boilers or pipes.

b. In the event of any loss, damage or casualty which is covered by one or more of the types of insurance described herein, the parties to this lease shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which shall be held in trust by State, including interest earned by State on such proceeds, for use according to the terms of this lease. The parties agree that such insurance proceeds shall be used to repair and restore damaged improvements to their former condition and usefulness or replacement of the same with equivalent or more suitable improvements.

When sufficient funds are available, using insurance proceeds described above, the parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all necessary work to:

1. Repair and restore damaged building(s) and/or improvements to their former condition, or
2. Replace said building(s) and/or improvements with a new building(s) and/or improvements on Premises of a quality and usefulness at least equivalent to, or more suitable than, damaged building(s) and/or improvements.

**3.11 Waste.** Lessee shall not cause or permit any filling activity to occur in or on the Premises, except as approved by State. Lessee shall not deposit refuse, garbage, or other waste matter, or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance or other pollutants, in or on the Premises except in accordance with all applicable laws.

The term hazardous substance means any substance or material as those terms are now or are

hereafter defined or regulated under any federal, state, or local law, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, as administered by the U.S. Environmental Protection Agency or the Washington Model Toxics Control Act (MTCA), RCW 70.105D, as administered by the State Department of Ecology.

Lessee shall immediately assume responsibility for a hazardous substance release (spill) caused by Lessee or its employees, sublessees, agents, assigns, authorized users, contractors, subcontractors, licensees, or invitees ("Permittees") on or adjoining the Premises.

As responsible party, Lessee shall:

- a. Immediately notify all necessary emergency response agencies, as required under federal, state, and local laws, regulations, or policies.
- b. Following emergency response agency notifications, notify State (Department of Natural Resources) of all spill releases and Lessee actions completed for spill reporting and actions planned or completed toward spill cleanup. State notification requirements are "same business day" notification for normal state work days and "next available business day" notification for weekends and holidays.
- c. At Lessee's sole expense, conduct all actions necessary to mitigate the spill release. Mitigation response actions may include, but are not necessarily limited to, initial release containment, follow-up site cleanup and monitoring actions, and continued contact and coordination with regulators and State, as defined under the aforementioned laws, regulations, and policies, and this lease.
- d. Other than performing initial emergency response cleanup/containment actions, obtain approvals in advance of all site cleanup actions (e.g. site characterization investigations, feasibility studies, site cleanup and confirmation sampling, and groundwater monitoring) conducted on State lands, in coordination with regulatory agencies and State.
- e. Obtain and understand all necessary hazardous substance spill release notification and response mitigation requirements, in advance of conducting Lessee operations on State land.

Lessee shall be fully and completely liable to State, and, to the extent permitted by law, shall indemnify, defend (with counsel acceptable to State), and save harmless State and its employees, officers, and agents with respect to any and all damages, costs, fees (including attorney's fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation, and/or sale of hazardous substances or that of Lessee's Permittees and for any breach of this subsection.

**3.12 Condition of Premises at End of Lease.** Prior to vacating the Premises, Lessee shall

leave the Premises and improvements described in Exhibit 2 to which State has elected to claim title in the state of repair and cleanliness required to be maintained by Lessee during the term of this lease.

**3.13 Sublease and Assignment.** Lessee shall not sublease the Premises in whole or in part without prior written approval of State. Lessee shall obtain sublessee agreement to be bound by the terms and conditions of this lease and any amended terms. Lessee shall remain fully liable for its obligations under this lease, including but not limited to payment of rent and other sums due in accordance with the terms of this lease.

State may assign the lease at State's option. Lessee shall not assign, hypothecate, mortgage, encumber, transfer, or otherwise alienate this lease or any interest therein, or engage in any other transaction which has the effect of transferring or affecting the rights of enjoyment of the Premises without prior written approval of State. Each permitted assignee or transferee of Lessee shall assume all obligations under the lease occurring after the date of assignment, including any amended terms. Lessee shall remain liable for any obligations occurring prior to the date of assignment. Lessee shall be jointly and severally liable with the assignee or transferee for all obligations under the lease occurring after the date of assignment with respect to those obligations that exist as of the date of assignment unless released in writing by State. State at its option may release Lessee from all but those terms and conditions of the lease that survive termination of the lease. Unless released in writing, Lessee's obligations shall continue in full force and effect until the Termination Date. State may require reimbursement for any additional administrative costs resulting from the assignment.

State's approval of a sublease or an assignment shall not constitute a waiver of State's right to approve or disapprove subsequent subleases or assignments. State's acceptance of payment or performance shall not constitute consent to any sublease or assignment and State's approval shall be evidenced only by writing.

**3.14 Name Change.** If during the term of this lease Lessee changes its name, Lessee shall provide State with documentation legally supporting the change within sixty (60) days of the effective date of the change.

**3.15 Improvements.** Lessee shall not place improvements on the Premises without prior written approval of State. Authorized improvements are identified in Exhibit 2 or subsequent Letters of Authorization, which shall be cumulative and shall become addenda to Exhibit 2. Unauthorized improvements shall be removed by Lessee, by State at Lessee's expense, or become State property, at State's option. Lessee shall remove unauthorized improvements within ten (10) business days of being directed to do so by State.

Lessee shall, at its sole cost, repair and maintain all improvements (regardless of ownership) in good order and repair for the safe conduct of activities permitted under this Lease.

Upon expiration or non-default termination of this Lease, Lessee owned improvements may be re-authorized by State through a subsequent agreement, removed by Lessee at its own expense, or

sold by Lessee to the subsequent lessee. Unless improvements are re-authorized by State, Lessee shall have sixty (60) days after expiration of this Lease to remove Lessee owned improvements or sell them to the subsequent lessee. Improvements not removed or sold to the subsequent lessee by Lessee within sixty (60) days after expiration or non-default termination of this Lease may be removed by the State at Lessee's expense or become State property, at State's option. If State terminates this Lease based on Lessee's default, all improvements on the Premises shall be forfeited and become the property of State, at State's option, subject only to any previously approved waiver of interest or security interest.

**3.16 Nonwaiver.** Waiver by State of strict performance of any provision of this lease shall not be a waiver of, nor prejudice State's right to, require strict performance of the same or any other provision in the future. State's acceptance of performance, rent, or any other sum owing, following a breach by Lessee of any provision of this lease shall not constitute a waiver of any right of State with respect to such breach. State may be deemed to have waived any right hereunder only if State has expressly done so in writing.

**3.17 Attorneys' Fees.** If either party brings suit to enforce any term or provision of this lease, then the substantially prevailing party shall be entitled, in addition to all other awards made in connection with the action, its reasonable fees, costs, and expenses, including attorneys' fees and costs, actually incurred.

**3.18 Liens.** State may file and maintain during the term of this lease landlord or crop liens in order to secure any payment or obligation under this lease. Lessee shall not suffer or permit any lien to be filed against: (1) CWPD's property or the property of any of the landowners within CWPD's boundaries in connection with its performance or the performance of its contractors, subcontractors, employees or agents, of the obligations under the CWPD/DNR Agreement and Subsection 2 of this lease; and (2) State's interest in the Premises, irrigation system and other improvements or crops growing thereon by reason of work, labor, services or materials performed thereon or supplied to, by or through Lessee. If any such lien is filed, Lessee shall immediately cause the lien to be discharged of record, but in no case later than thirty (30) days after the date of filing or creation of such lien unless other arrangements are approved in writing by State in advance. If Lessee fails to cause a lien to be discharged, or to file a bond in lieu thereof, DNR or CWPD may pay all sums necessary to discharge the lien at the cost and expense of Lessee.

**3.19 Liquidated Damages.**

- a. Disease/Pesticide or Herbicide Damage. Upon failure by Lessee to care for the Premises in a manner that meets or exceeds industry standards as required in Subsection 2.01 which results in introducing quarantined disease or damage from pesticide or herbicide residue that diminishes the productivity of, or limits cropping options on, the Premises, Lessee shall pay to State, as liquidated damages and not as a penalty, a sum equal to the cash rent rate in effect at the time breach is discovered by State, multiplied by three (3) years and applied to the number of acres affected.

would result to the State by the Lessee's breach from decreased productivity or inability to cultivate the affected portion of the Premises for a reasonably foreseeable period of three years after the breach occurs, regardless of when discovered.

b. Water. If Lessee fails to use the State's water supply as authorized and required under this lease, State could lose valuable water rights. Lessee shall pay to State, as liquidated damages and not as penalty, an amount determined under this subsection in the following circumstances:

1. For water permits, if Lessee fails to preserve the full use of State's water permit(s) for future use by failing to comply with the terms of the permit, including the development schedule as required in this lease, or failing to consistently use the water to the full extent authorized and as required under this lease, as determined by State;
2. For water certificates, if Lessee fails to use the State's water supply to the full extent authorized and as required under this lease for five successive years without sufficient cause, as determined by State; and/or
3. For irrigation district water, if Lessee fails to preserve the State's irrigation district water for full beneficial use in the future, as determined by State.

Lessee shall not be subject to liquidated damages if Lessee has provided timely notice of surplus or under usage of water as required under Subsection 2.10 5. In the case of a water permit under a development schedule, such notice does not excuse Lessee from liquidated damages unless an extension of the development schedule is approved by the Department of Ecology and subsequently met by Lessee.

Liquidated damages shall be determined as follows:

$$\text{CPI Current (date breach discovered)} / \text{CPI Past (Commencement date)} = \text{IF}$$

$$\text{IF} \times \text{WV} = \text{WVB}$$

$$\text{WVB} \times \text{AF} = \text{Liquidated Damages}$$

*Where:*

$\text{IF} =$  Inflation Factor

The Inflation Factor is the change in the monthly Core Inflation Consumer Price Index Value from the Commencement Date to the date that breach is discovered by State. The data source for the inflation factor is CPI-U, All Urban Consumers 1982-84=100, Series



Id. CUUROOOOSAOLIE.

WV = Water value per acre-foot of the surface water right at Commencement Date = \$3,500.00.

The Water Value represents the market value for surface water right in the geographic area of the Premises as of the Commencement Date as determined by State.

WVB = Water value at time breach discovered

AF = Acre-feet or portions of acre-feet not put to full beneficial use for five successive years as determined by State

The liquidated damages amount represents a reasonable pre-estimate of damages that would result to the State by the Lessee's breach from loss or potential loss of all or a portion of State's Water Right or State's irrigation water supply.

Lessee's liability under this Subsection 3.19 shall survive the termination or expiration of this lease.

State retains the option to pursue alternative remedies, including actual damages, for the breaches specified in this Subsection 3.19.

**3.20 Default.** If Lessee breaches any requirement of this lease, whether material or not, State may terminate this lease after Lessee has been given thirty (30) days' notice of the breach and such breach has not been corrected within that time. With or without terminating the lease, State may seek damages for any and all defaults and reenter Premises and take whatever action may be necessary or advisable to relet, protect, or preserve Premises. State may store any property it removes from Premises in a public warehouse or other suitable place or otherwise dispose of the property, at State's discretion, at the expense and for the account of Lessee. State shall not be responsible for any damages or losses suffered by Lessee as a result of such reentry, removal, storage, or other disposition, and none of this action shall be construed as an election to terminate this lease unless a written notice of termination is given to Lessee. The remedies provided for in this lease shall not be exclusive but are in addition to all other remedies available by law.

**3.21 Survival.** All obligations of Lessee to be performed prior to expiration or earlier termination of this lease shall not cease upon the termination or expiration of this lease, and shall continue as obligations until fully performed. All clauses of this lease that require performance beyond the termination or expiration date, including but not limited to Subsections 3.09, 3.10, 3.11, and 3.19, shall survive the termination or expiration date of this lease. However, upon expiration or termination of this lease, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Premises and all improvements thereon, unless specified otherwise in this lease, shall cease.

**3.22 Force Majeure.** Lessee's failure to comply with or delayed compliance with any



obligations under this lease shall be excused only if due to causes entirely beyond Lessee's control and without the fault or negligence of Lessee, including riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God. Obligations shall be excused only for the period of delay.

**3.23 No Partnership.** The State is not a partner or joint venturer with Lessee in relation to this lease or otherwise and shall not be obligated on Lessee's debts or liabilities.

**3.24 Condemnation.** If any public authority under the power of eminent domain takes all of the Premises, this lease will terminate as of the date the public authority, pursuant to the condemnation, takes possession. If any part of the Premises is so taken and, in the opinion of either State or Lessee, it is not economically feasible to continue this Lease in effect, either party may terminate this lease. Such termination by either party shall be made by notice to the other given not later than thirty (30) days after possession is so taken, the termination to be effective as of the latter of thirty (30) days after said notice or the date possession is so taken. If part of the Premises is so taken, and neither State nor Lessee elects to terminate this lease, or until termination is effective, as the case may be, the rent will be abated in the same proportion as the portion of the Premises so taken bears to the whole of the Premises. All damages awarded for the taking or damaging of all or any part of the Premises, or State-owned improvements thereon, shall belong to and be the property of State, whether made as compensation for diminution in value of the leasehold, for the taking of the fee, or for severance damages, and Lessee hereby assigns to State any and all claims to the award, but nothing herein contained shall be construed as precluding Lessee from asserting any claim Lessee may have against the public authority for disruption or relocation of Lessee's business on the Premises or for Lessee's authorized improvements.

**3.25 Numbering.** Section and subsection numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this lease.

**3.26 Time of Essence.** Time is expressly declared to be of the essence of this lease and each and every covenant of Lessee hereunder.

**3.27 Amendments and Alterations.** Amendments and alterations to this lease shall be in writing and shall be signed by both State and Lessee. Neither State nor Lessee shall be bound by verbal or implied agreements.

**3.28 Entire Agreement.** This written lease or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

**3.29 Discrimination.** Lessee shall not conduct or suffer any business upon the Premises which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or mental or physical disability or which otherwise violates applicable civil rights and anti-discrimination requirements, including but not limited to RCW 49.60.

**3.30 Proprietary Information/Public Disclosure.** All materials or information provided to State by Lessee shall become public records within the meaning of the Public Records Act, RCW 42.56, and are subject to disclosure to the public unless an exemption applies.

**3.31 Exhibits.** Exhibits referenced herein, including those which may be added during the term of this lease, are incorporated herein by reference and are to be considered terms of this lease.

**3.32 Notices, Payments, and Submittals.** Lessee shall provide any notice, payment, or submittal required under the CWPDP/DNR Agreement according to the terms of that Agreement. Lessee shall timely provide State copies of such notices, notice of payments made, and submittals that Lessee provides to, and that Lessee receives from, CWPDP. Any notice, payment, or submittal given under this lease by and between Lessee and State shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed and sent to the addresses listed below. Email shall also be acceptable notice or submittal. Changes of address shall immediately be given in accordance with this Subsection. All payments to State required under this lease shall be submitted to State at its Division office. Any notice or submittal given under this lease shall be sent to State at its Region Office.

Send payment to Division Office:  
Department of Natural Resources  
Financial Management Division  
PO Box 47041  
Olympia, WA 98504-7041

Send notice and/or submittals to Region Office:  
Department of Natural Resources  
Southeast Region Office  
713 Bowers Road  
Ellensburg, WA 98926  
[southeast.region@dnr.wa.gov](mailto:southeast.region@dnr.wa.gov)

To Lessee:

At the address affixed with Lessee's signature or Lessee's last known address.

**3.33 Taxes, Assessments, and Utilities.** Lessee shall:

a. Pay all federal, state, and local taxes, penalties and interest owing due to Lessee's failure to pay such taxes, penalties, and interest, including, but not limited to, personal property tax and leasehold excise tax in accordance with RCW 82.29A, as it may be amended from time to time, that may be charged against the lease and improvements located on the Premises. Leasehold excise tax will be billed at the time rent is due;

b. Pay all assessments that may be charged against the Premises unless otherwise approved in writing by State due to a shared use of the Premises authorized by State

pursuant to Subsection 3.06. Lessee's responsibility to pay an assessment shall never be reduced below Lessee's share of the use and control of the Premises. Assessments will be billed at the time rent is due, and may include collection of payments for more than one billing cycle, or on another schedule determined by State to avoid administrative costs associated with billing. Lessee's obligations under this subsection are not limited to assessments relating to the encumbrances, if any, listed in the legal description and set forth in Exhibit 4, but extend to all assessments that may be charged against the Premises, including, but not limited to, weed assessments, watershed protection district assessments, conservation district assessments, storm water runoff assessments, and local improvement district assessments; and

c. Subject to 1.03a, be liable for all electrical power and other utility charges or expenses associated with Lessee's use of the Premises, including, but not limited to, power minimums and disconnect charges incurred prior to termination or expiration of this lease.

**3.34 Federal Farm Program.** Participation in any federal farm program for the Premises must have prior written approval from State.

**3.35 Audit.** At its option, State or its agents may conduct, at any reasonable time upon forty-eight (48) hours' notice, an audit including but not limited to Lessee's business records. If an audit discloses additional liability to State, Lessee shall immediately pay all amounts due plus interest from the date such payment was originally due and payable, but in no case later than thirty (30) days after notice of the additional liability. The acceptance by State of any payment under Section 1 herein shall be without prejudice to State's right to examine Lessee's books, records, and files of all kinds.

**3.36 Cultural Resource Management.** Lessee shall cease all work in the area and immediately notify State if ground disturbing activities associated with the operation or development of the Premises expose cultural resources.

**3.38 Surety Bond.** At State's request, Lessee shall obtain a surety bond, cash deposit, certificate of deposit, savings account assignment, performance bond issued by a company acceptable to State, or letter of credit to guarantee payment of damages and performance of all provisions or obligations of Lessee under this lease, in an amount established by State, to assure completion of construction, development, rehabilitation, or removal of any improvements.

**FRANK TIEGS, LLC**

Dated: 8-1-18, 2018

Frank Tiegs  
Frank Tiegs, Managing Member

6610 W. Court Street Suite B  
Pasco, WA 99301

509-545-4545

Frank Tiegs: [frank@ftiegs.com](mailto:frank@ftiegs.com)

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES**

Dated: 1 August, 2018

Angus Brodie  
ANGUS BRODIE  
Deputy Supervisor for State Uplands



Approved as to form this  
July 18, 2018  
Adrienne Smith  
Assistant Attorney General

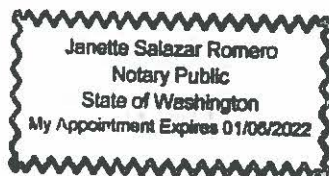


**NOTARIAL CERTIFICATE  
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

STATE OF Washington )  
 )ss  
COUNTY OF Franklin )

I certify that I know or have satisfactory evidence that Frank Tiggs [name(s)]  
[is/are] the person(s) who appeared before me, and said person(s) acknowledged that  
[he/she/they] signed this instrument, and on oath stated that [he/she/they] [was/were] authorized  
to execute this instrument, and acknowledged that [he/she/they] [was/were] the  
managing member [office or title(s)] of Frank Tiggs, LLC  
[business name of Lessee] to be the free and voluntary act of such [party/parties] for the uses  
and purposes mentioned in this instrument.

DATED: 8/1/18  
(Seal or Stamp)



Janette Salazar Romero  
NOTARY PUBLIC in and for the  
State of Washington

My appointment expires 01/06/2022

**NOTARIAL CERTIFICATE  
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

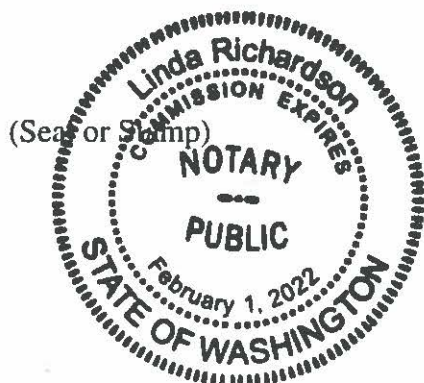
STATE OF WASHINGTON                    )  
  )ss  
COUNTY OF THURSTON    )

*Department Supervisor*

*Megan  
Huffy*

On this 12<sup>th</sup> day of August, 2018, personally appeared before me ~~Angus Bredie~~ to me known to be the ~~Deputy Supervisor for State Uplands~~ of the Department of Natural Resources, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



*Linda Richardson*  
\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington  
My appointment expires 2-1-22



**EXHIBIT 1**  
**PLAN OF DEVELOPMENT & OPERATION**  
**Lease No. 12-095036**

**Development Timeline**

Premises contains 5,047.20 acres, of which lessee will develop a minimum of 2,955.1 acres to irrigated agriculture, and reserve 938.6 acres as wildlife habitat. Provided that Lessee acquires additional acreage currently under DNR Lease No. 12-088961 and this lease is amended to include those acres, the total irrigated acres to be developed under this proposal will be 3,129.87 irrigated acres.

The water delivery system from the Columbia Water and Power District river pumping station to farm booster will be installed, tested, and operational by March 1, 2019. On farm installation of mainline and circle irrigation systems will begin September 2018 with plans for 2,100 acres to be full season cropped in 2019. The balance of acres will be ready in the 2020 irrigation season. Double cropping will allow maximum days of irrigation between the February 1 and November 15 period.

**Development Costs and Project Funding**

Frank Tiegs LLC shall purchase and install all required improvements to the CWPDP Water System, pumps, mainline, circles, and electrical facilities, and shall perform land leveling and road development. Total cost estimate for the project is \$26,902,275.00, as shown on page 31.

Frank Tiegs LLC will own all above ground improvements located on the Premises, as set forth in Exhibit 2, including circles, farm zoned booster station, and water delivery booster station. Estimated cost for these lessee-owned improvements is \$4,057,634.00.

## Initial Project Cost Estimates

<p> <b>CDM Lease No. 12-095036</b>  <b>Frank Tieg, LLC</b>  <b>Don Patterson - Horse Heaven Hills Project</b>  <b>Farm Development 2018 - 2019</b>  <b>Horse Heaven Land Water Right - 2,115 irrigated Acres growed-up</b> </p>			
<p> <b>30 20-psi Onsite systems</b>  <b>Farm Booster Station</b>  <b>Electrical power meter</b>  <b>Booster Station Station</b>  <b>Frank Tieg LLC equipment costs</b> </p>	<p> <b>Costs</b>            \$ 1,518,006.00            \$ 376,000.00            \$ 880,000.00            \$ 843,299.14            \$ 4,237,304.14         </p>	<p> <b>Irrigation Specialist Design</b>  <b>Impresser Specialist Design</b>  <b>and install electrical</b>  <b>CNC Contracting</b> </p>	
<p> <b>CDM Development Costs</b>  <b>Heavy Paving Station, Booster Station and mainline - Current River to farm</b>  <b>Farm Mainline Installation</b>  <b>Leveling existing acres</b>  <b>Access Roads - gravel road built up to 8 ft from field, curbs, drainage, pumps</b>  <b>On - Off Site Striping &amp; Management (contingency 10%)</b>  <b>Total Development Costs - water delivery to Don Horse Heaven Farm</b> </p>		<p>           \$11,501,125.41            \$620,575.67            \$ 1,972,401.48            \$ 2,755,000.00            \$ 230,000.00            \$ 1,928,331.24            \$ 23,211,645.13            \$ 1,531,256.83            \$ 22,680,388.30            \$ 14,000,000.00            \$ 38,680,388.30         </p>	<p> <b>CDM Mainline Design &amp; Install per AIA Engineering Specifications</b>  <b>4,000 ft extension of river mainline - Harrison Road to farm booster pump</b>  <b>Irrigation Specialist Design</b> </p>
<p> <b>Taxes</b>            2 700%  <b>CDM Projected Taxes - 2018/2019 project taxes costs</b>  <b>Total Projected Taxes (included)</b>  <b>CDM utility annual water delivery fee</b>  <b>CDM total payment</b> </p>	<p>           \$ 231,455.15            \$ 385,175.00         </p>		
<p> <b>Lease No. 12-095036</b>  <b>CDM Lease No. 12-095036 Horse Heaven Hills - applied to development CDM</b>  <b>Annual Rent Credits - all Frank Tieg CDM taxes</b>  <b>Total annual credit service</b> </p>	<p>           \$ 328,375.00            \$ 1,208,999.41            \$ 1,498,374.41         </p>		<p>           2014         </p>

### **Irrigation Water Delivery System**

Irrigation Water Delivery System plan accepted with acreages corrected as described in the Farm Layout and Land Clearing and Soil Preparation sections below.

## FRANK TIEGS LLC.

6610 W. Court St. Ste. B, Pasco, WA 99301 Phone: (509) 545 - 4545 | Fax: (509) 545 - 4804



Development Plan  
Washington State Department of Natural  
Irrigated Lease No. 12-095036

### Irrigation Water Delivery System

The DNR premises of 5,047.20 acres offered in Lease No. 12-095036 will be developed into 3,100 acre high value irrigated row crop farm.

Thirty (30) Zimmatic circle irrigation systems (see enclosed design per Irrigation Specialist) will be installed during the over the eighteen months from August 2018 to December 2019.

Irrigation of the 3,115 developed acres beginning in March 2020.

This irrigation system will be installed using a combination of 30 Zimmatic center pivots and a four pump zoned booster station.

Zoned Booster pump station has three 500HP plus one 250HP

All system connecting mainlines are pvc sizes 24", 21", 10" 8".

Enclosed Irrigation Specialist System Design was designed per JUB approved specifications.

The irrigation system will supply 7 gpm per min per acre at the required 5 psi above each sprinkler regulator.

In most cases, the system will require 45 psi at the at the circle pivot and has been designed for maximum flow not to exceed 5 foot per second velocity in the mainlines.

The system is able to program different set points on the booster station depending on pivots operating to allow for maximum conservation of electricity.

System is designed with 6 mainline clusters to provide water delivery to irrigation circles.

The system will supply 100% of flow at 7 gpm per acre to mainline clusters on the project.

The system has capacity to operate all irrigation circles but due to the allowable water right delivery of 17,600 gpm we will be operating a maximum of 20 circles at any one time.

The Paterson Mainline system was designed per JUB approved specifications (see enclosed design per Clearwater Contracting, LLC) to deliver the allowable 17,600 gpm from the CWPD River Station to the on farm zoned booster pump located ¼ North of Horrigan Road.

### **Farm Layout – Crops – Full Beneficial Water Use**

Map #2 shows the 2018-2019 installation of 30 Zimmatic circles to irrigate a minimum of 2,955.1 acres in 2019. Provided that Lessee acquires lease for the land currently under DNR Lease No. 12-088961 and this lease is amended to include those acres, the total irrigated acres to be developed under this proposal will be 3,129.87 irrigated acres.

Planned crops to be produced will include potatoes, green peas, onions, sugar snap peas, sweet corn, field corn, timothy, alfalfa, and wheat. These crops will be rotated, double cropped, and then followed by cover crops to maximize water usage in proving up the 11,735 afy authorized under Water Permit No. S4-25639(A)P as changed by CS4-25639(A)@2 on the 2,955.1 irrigated acres.

With the CWP/DNR limited authorized flow of 17,600 gpm the 11,735 afy (4.0 af/acre) water right may need to be proved by section. Installing meters to measure the flow to each specific section of the irrigated acres and proving-up the 4.0 af water right per section.

With the construction of this project extending into 2019 and the fact that the additional irrigated acres under lease No. 12-088961 are not available in 2019, we will not address the full beneficial use of 12,429 afy for 3,129.87 irrigated acres until the 2020 irrigation season or later.

### **Land Clearing and Soil Preparation**

Premises will require aggressive leveling on approximately 250 of the 2,955.10 acres (3,129.87 acres including acreage under lease No. 12-088961) designed for circle irrigation to fill in deep ravines to allow operation of farming equipment during planting, cultivating, and harvest. In addition, a significant percentage of the acres on the edge of many fields will require some leveling to allow circles to rotate smoothly during irrigation.

We will be building a minimum of 10 miles of graveled roads on Premises to allow semi-trailers and other trucking access to and from the fields during farming operations. In addition, we will be building circle access roads to all pivots and around field circumferences where required.

Wind erosion and dust control during these operations will be controlled by water truck application in the fall and winter months of 2018-2019. After completion of the Paterson mainline in late February 2019, we will use circle irrigation of water to all land clearing and soil preparations operations.

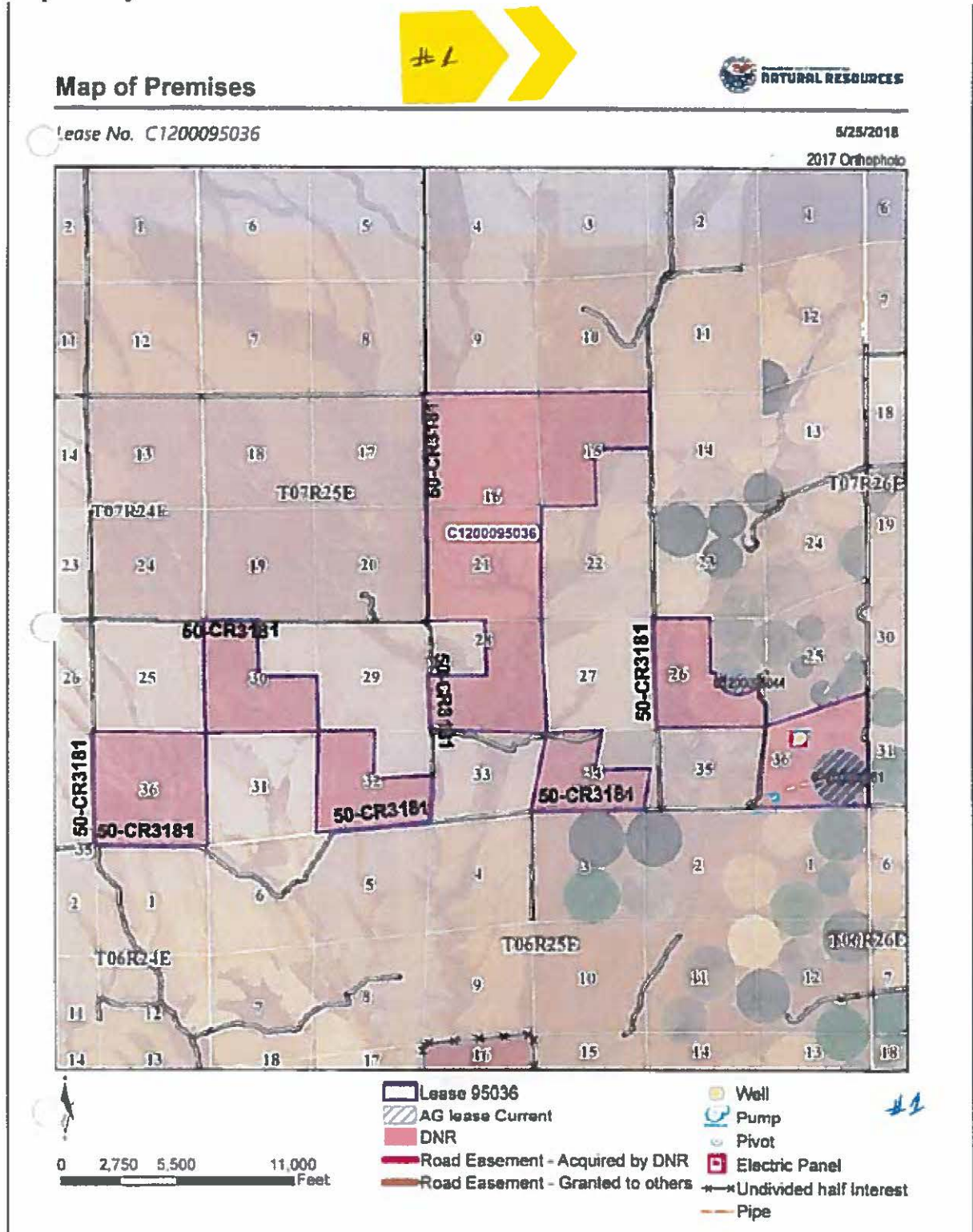
The equipment that will be used for filling ravines and leveling acres where required for efficient and safe operation of farming equipment will primarily be caterpillar D9s and Scrapers.

Soil preparation of irrigated acres prior to planting crops will be minimum type tillage required for efficient planting of crop seed and to minimize soil erosion. All soil preparation for farming will be scheduled after water delivery system and circle irrigation has been completed and irrigation successfully applied to the acres to be planted.



## Proposed Project Development Maps

Map 1: Project Premises



Map 2: Circle Layout

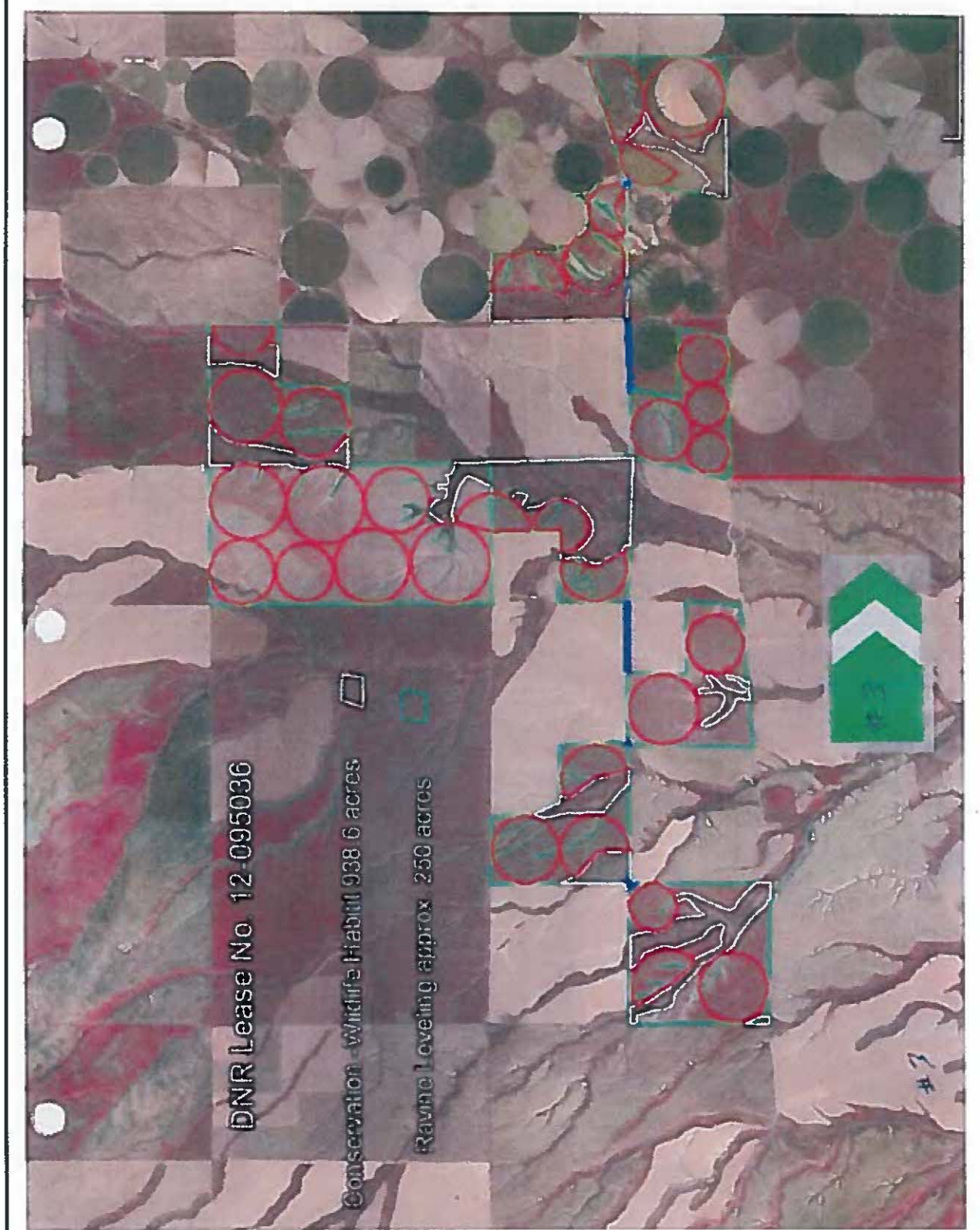


#2





Maps 3, 4: Reserved Habitat







Habitat Exclusion Area  
2015 air photo in background

0 0.75 1.5 3 Mile

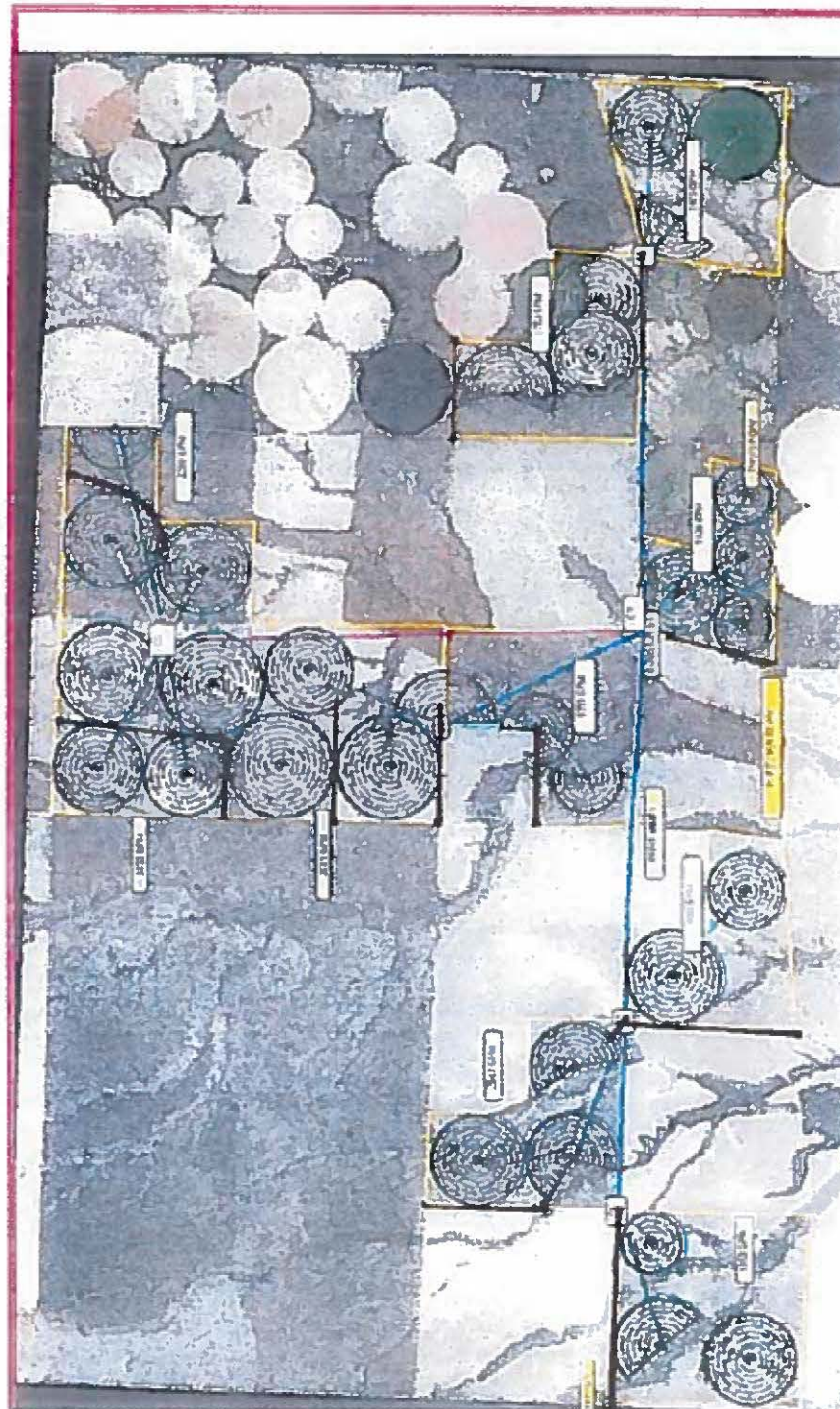
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T07R24E T07R25E T06R24E T06R25E

#15



### Map 6: Graveled Roads



~ 10 miles graded road  
support load seals to + from fields  
planned to avoid Conservation wildlife habitat #6

7. 林

## EXHIBIT 1E

### Required Development, Activities or Actions

The following activities, improvements, or actions are required as a condition of this lease and shall be implemented by the scheduled completion dates included in the table below and based on the proposed development timeline on page 42. Completion will be determined as established in the Paterson Project Completion Language in Exhibit 1E.

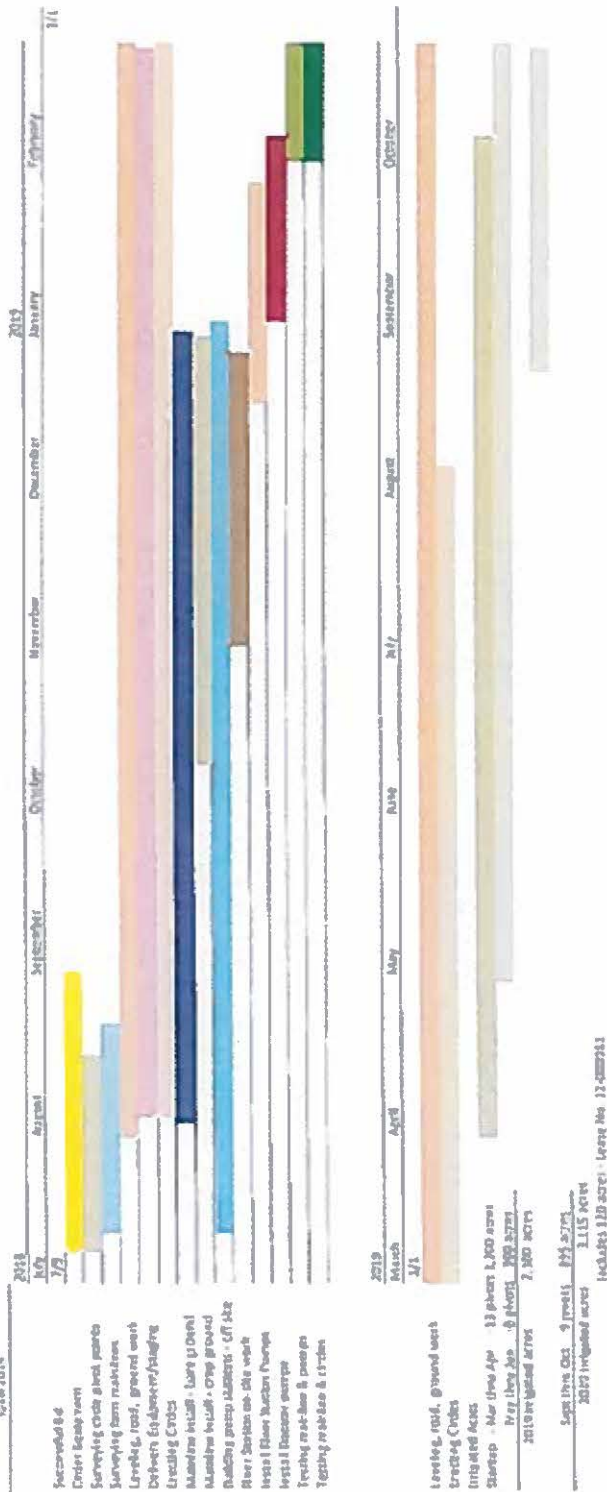
Description	Location	Completion Date
<b>CWPD Water System Improvements</b>		
(1) Obtain final plans and specifications from J.U.B. Engineering		
(2) Obtain CWPD approval of final plans and specifications		
(3) Obtain DNR approval of final plans and specifications and hold pre-work meeting with DNR		
(4) Begin construction/construction complete		Begin 2018/ Complete 2019 *Completion date may be extended to no later than March 15, 2020.
<b>Irrigation system from CWPD Tie-In to Horrigan Road</b>		
(1) Obtain final plans and specifications from J.U.B. Engineering		
(2) Submit written plan of construction to each grantor of penstock pipeline easement		30 days prior to construction or reconstruction of penstock pipeline through an easement area
a. Obtain easement grantors' approval		" "
b. Notify grantor of any intent to remove crops following process in the Crop Removal Section in each easement.		" "
(3) Coordinate with Benton		

County Public Works for facility installation under franchise agreement for pipeline crossing at Horrigan Road, receiving approval prior to work with in the right of way.		
(4) Obtain DNR approval of final plans and specifications and written plan of construction.		
(5) Begin construction/construction complete		Begin 2018/ Complete 2019
<b>On-Farm and Related Irrigation Systems</b>		
(1) Obtain DNR approval of plans and specifications		
(2) State acquire additional pipeline easements for interconnection between non-contiguous parcels within Premises		
(3) Begin construction/construction complete		Begin 2018/ Complete 2020

# Proposed Development Timeline

Table A

Prank Tingo, LLC  
Development Timeline  
OHR Development Lease  
Horse Heaven Irrigated Farm  
1218-2019



**EXHIBIT 1F**  
**Easements**

State has acquired, or is in the process of acquiring, the pipeline easements listed below for construction of irrigation pipeline to premises. State will be responsible to acquire additional easements to interconnect pipeline between non-contiguous parcels within Premises.

**Penstock Pipeline Easements**

Below referenced easements are attached as Exhibit 1F

Lessee shall comply with terms and conditions of below listed pipeline utility easements.

<b>Easement No.</b>	<b>Grantor</b>	<b>Locations</b>
Pending Application No. 55-095032	Ste. Michelle	Within Section 12, T5N, R25E, W. M Within Section 1, T5N, R25E, W. M Within Section 2, T5N, R25E, W. M Within Section 35, T6N, R25E, W. M
55-095033	Glade Creek, LLC	Within Section 35, T6N, R25E, W. M Within Section 34, T6N, R25E, W. M Within Section 27, T6N, R25E, W. M Within Section 22, T6N, R25E, W. M
Pending Application No. 55-095034	Lamb Weston, Inc.	Within Section 21, T6N, R25E, W. M
N/A	DNR	Within Section 16, T6N, R25E, W. M
55-095035	Horrigan Farms, Inc.	Within Section 9, T6N, R25E, W. M Within Section 4, T6N, R25E, W. M
Pending Franchise 92-097393	Benton County	Within County Road Right of Way where approved by County Engineer.



# EXHIBIT 1G Map of Premises

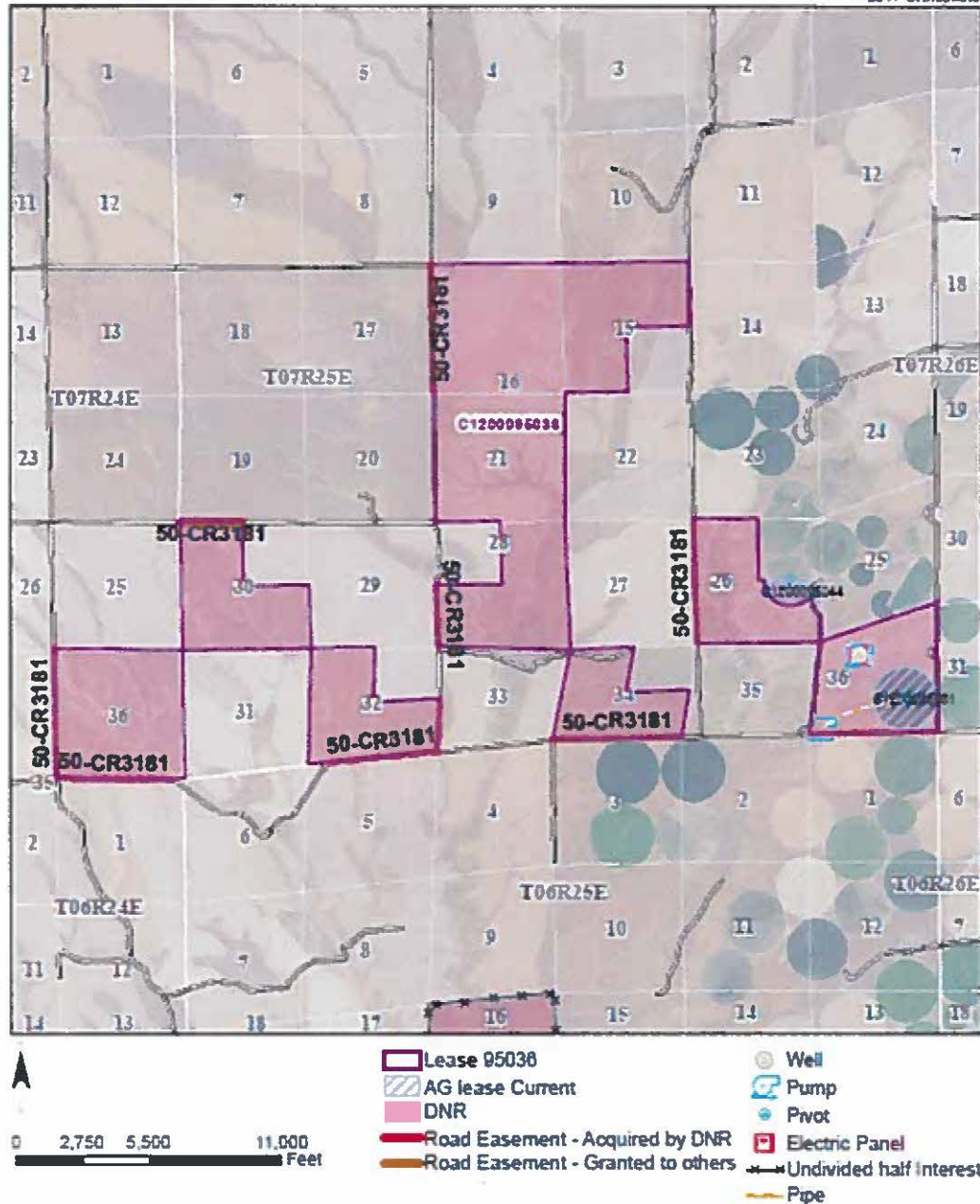
## Map of Premises



Lease No. C1200095036

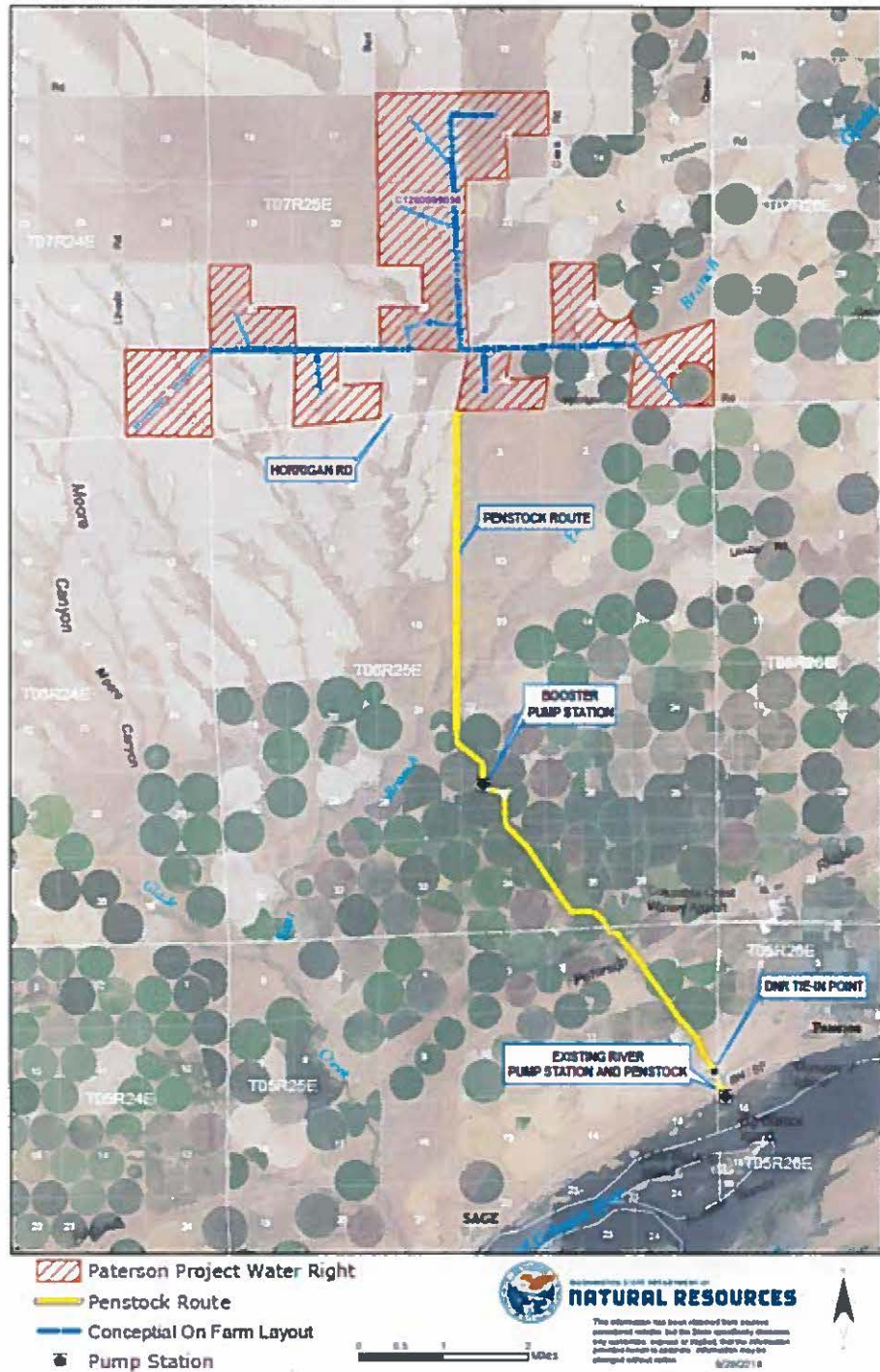
6/26/2018

2017 Orthophoto



# **EXHIBIT 1H** **Paterson Project Area Map**

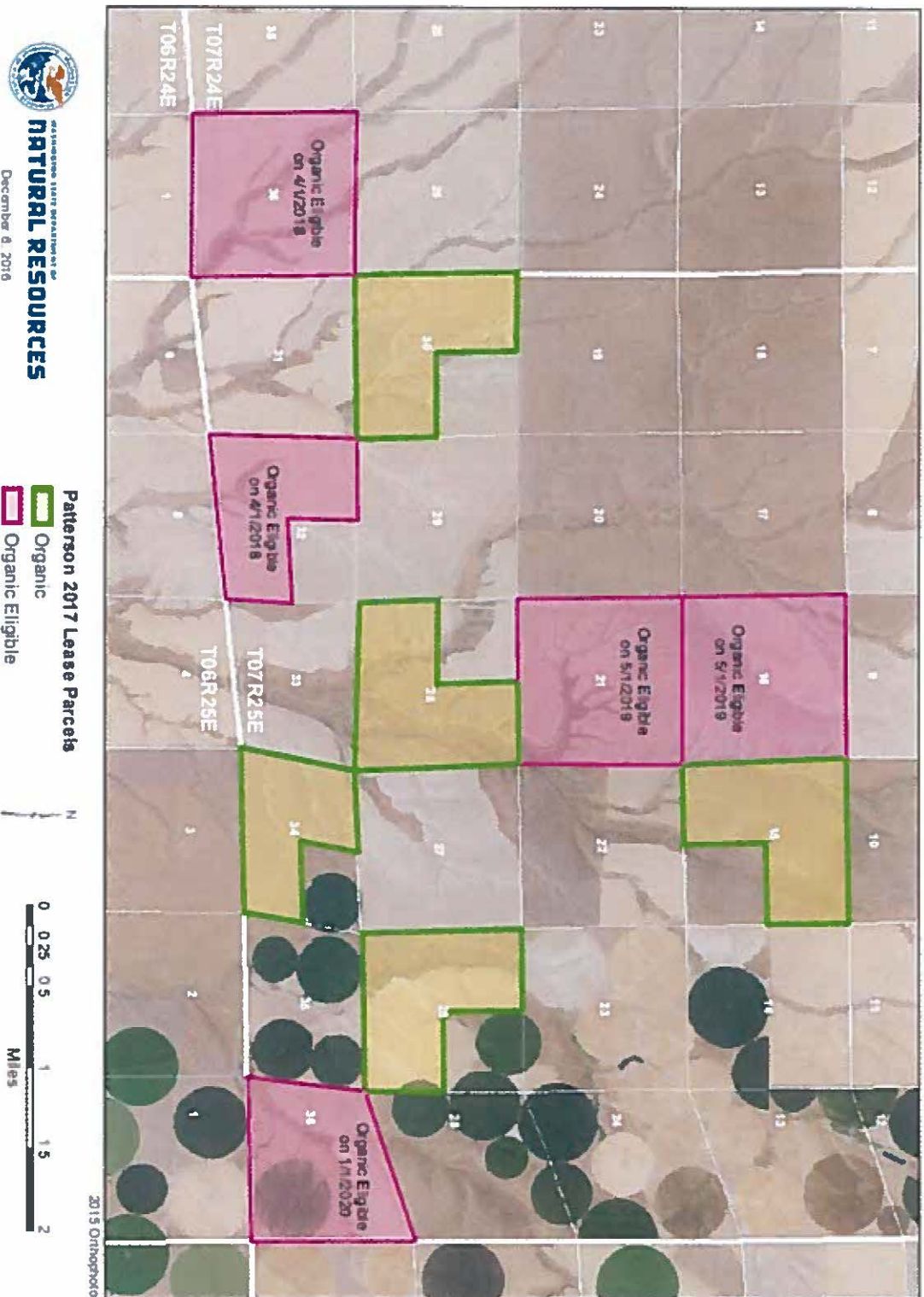
## **PATERSON PROJECT**





# Patterson 2017 Lease

Organic Status



### **Irrigation Water Use Authorization**

State's Water Right, Surface Water Permit No. S4-25639(A)P authorizes a total of 56.99 cubic feet per second (cfs) and 13,713.95 acre-feet/year (afy) for irrigation of 3,453.5 acres and is currently under a water right development schedule deadline of January 1, 2026, to complete all construction. The portion of the permit to be used for irrigation on the Premises is described in the table below for development of 2,955.1 irrigated acres. Provided that Lessee acquires additional acreage currently under DNR Lease No. 12-088961 and this lease is amended to include those acres, the total irrigated acres will increase from 2,955.1 to 3,129.87 acres in 2020 or later. At the time the lease is amended, the total acre-ft/yr below would be amended to reflect the full acreage proposed for development.

Information provided is only a summary of Water Supply and authorized use. Water Supply documents are attached for reference. Further information is available from State. The actual water right takes precedence over the summary below.	
<b>Surface Water Right No:</b> S4-25639(A)P as changed by CS4-25639(A)@2	
Type of Authorization	State water right
Authorized Irrigation Use	Up to 17,600 gpm and 11,735 afy for irrigation of up to 2,955.1 acres from February 1 to November 15 each year within water right place of use as described on Permit LESS a 938.6 acre area of undeveloped wildlife habitat.
Surface diversion(s) or turnout	Columbia Water and Power District (CWPD) Diversion located at Columbia River Mile 166, within NW¼NW¼ of Section 18, Township 5 North, Range 26 East W.M. as shown on lease map.

**Additional reporting.** During the course of the water right development schedule, State may require additional reporting of water use by Lessee to document quantity of water being put to beneficial use under State's Water Right. Examples of additional water use information that may be required include pivot run time data, additional water use measuring device(s), etc.

### **Resource Management Plan**

The resource management section describes the management objectives and practices agreed upon by State and Lessee to manage agricultural and grazing production on Washington's trust lands. If the management requirements cannot be followed due to any climatic variations, unforeseen events, or other land management activities that lead to changes from agreed upon resource management, Lessee must obtain authorization from State regarding any proposed changes prior to implementation.

**Composite Erosion Rate:** The Lessee shall maintain or improve the soil profile by applying farming practices that reduce sheet, rill and wind erosion. The composite erosion rate for the crop rotation shall not exceed the soil loss tolerance "T": the amount of topsoil that can be replaced naturally in a year on the soil mapping unit found on the leased premises.

**Chemigation, Fertigation, Fertilizer, and Pesticide Management:** If chemigation, fertigation, fertilizer, and/or pesticide is utilized, Lessee shall meet all applicable Federal, State, and local regulations.

**Weed Control:** Lessee shall control all noxious weeds on all lands under this lease consistent with applicable laws. Lessee shall be responsible for, and shall reimburse State for, any noxious weed control costs incurred as a result of Lessee's failure to control.

The Lessee shall use Integrated Pest Management (IPM) to control weeds. This means using a coordinated decision-making and action process that considers all weed management methods and strategies, and applies them in an environmentally and economically sound manner to meet weed management objectives. The elements of integrated pest management for weeds include:

1. Preventing weed problems;
2. Monitoring for the presence of weed species;
3. Establishing the density of the weed population (which may be zero) that can be tolerated;
4. Treating weed problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and
5. Evaluating the effects and efficacy of weed control treatments.

**Conservation Wildlife Habitat:** Lessee shall maintain at least 938.6 acres of existing vegetation (undeveloped wildlife habitat) to protect plant species and provide wildlife habitat and cover.

**Cover Crops:** Within 15 days following the harvest of any low residue crops on the lease premises, the Lessee shall plant and irrigate, at their sole expense, a cover crop of wheat or other cereal grain with a minimum seeding of 50 pounds per acre or the Lessee may fall seed alfalfa. Low residue crops are those that will not have enough residue remaining to meet or exceed the over-winter levels as required in the crop residue section below.

When taking out the cover crop in the spring, the Lessee must delay tillage until 5 days or less before crops are planted during February and March, and 10 days or less before crops are planted during April or later.

**Crop Residue (irrigated):** The Lessee shall maintain the following crop residue levels during the critical erosion period (November - May) to conserve soil moisture, increase soil infiltration, reduce soil loss, and improve soil tilth. Residue will be measured using the line and point method.



Minimum lbs/acre	
1,000	of small grain residue.
1,200	of corn residue.
900	of Sudan grass residue.

**Mass Soil Movement and Gully Erosion:** Lessee shall apply farming practices that limit the potential for mass soil movement and gully erosion.

**Pesticide Management:** The Lessee shall utilize Integrated Pest Management (IPM) in conjunction with standard industry methods for controlling pests. Methods of application shall be utilized that will ensure optimum protection of the plants, while insuring that pesticides will not be transported off site or have non-target impacts.

### **Additional Requirements**

**Site Rehabilitation.** Prior to expiration or earlier termination of this lease, State may require Lessee to rehabilitate the portion of the premises planted to irrigated row crops to a farmable condition. Farmable condition means that all tree stumps will be removed and all land will be brought back to a condition conducive to the production of irrigated row crops.

Farmable condition shall include causing all woody material to be less than (1) inch in diameter and less than (12) inches in length. At State's request, Lessee shall incorporate any woody material on the surface into the top (6) inches of soil at no cost to the State. Lessee shall not leave in the soil, at levels that are harmful to ordinary agricultural crops, any residual chemicals applied during the term of this lease.

### **Water System Specifications for On-Farm Irrigation System, Sec.2.06 2**

**Plans and Specifications:** The irrigation system design, plans and specifications shall adhere to the following criteria unless State approves an alteration or deviation in a preconstruction conference.

1. **Plans:** Plans shall be prepared by the Lessee to show the locations of irrigation system components, including but not limited to, wells, pipelines, pump stations, valves (air, vacuum and isolation), circle irrigation machines (circles), circle valve clusters, water delivery locations to solid set irrigation blocks, electrical equipment, flow meters, and site improvements. Well information shall include the anticipated diameter, depth, static water level, pumping water level, pump motor horse power and rpm, and the anticipated pump to be installed in the well. Pipe diameters, materials, joint type, pressure class or wall thickness (as applicable,) and lengths shall be noted. Where pump stations are required, the drawings shall identify suction and discharge pipe and fitting sizes, pipe materials, valves, pumps to be installed, including their hp, design head and capacity,

make and model. Circle hardware lengths, design flow rates and irrigated acreage shall be identified for circle irrigated areas. Circle control and telemetry equipment shall be identified. Circle valve cluster drawings shall identify pipe and fitting sizes and materials, pivot control valves and isolation valves to be installed. For solid set areas, block acreages and their design flow rates shall be identified. A typical block manifold and pipe layout shall be provided along with the filtering to be installed shall be identified. The electrical equipment to be installed in conjunction with each motor shall be listed. This requirement shall include a typical circle power cluster arrangement where circles are being installed. Site improvements to be noted shall include any fencing, gravel surfacing, and any buildings proposed for the electrical equipment.

2. **Minimum Specifications:** Pipe and pumping facilities shall be designed to deliver a minimum of 7.5 gallons per minute (gpm) per irrigated acre for circle irrigated areas and solid set irrigation systems delivering water to tree fruit and berries. Distribution piping installed to deliver water to drip irrigation systems supplying wine grapes shall have a minimum application rate of 5 gpm per irrigated acre.

Piping from the water source to the farm ground shall be designed to convey 100% of the available water up to the amount required to irrigate 100% of the irrigable ground simultaneously. Where the water supply is not adequate to irrigate an entire farm simultaneously the distribution system must be adequate to convey the entire water supply and the water supply must be sufficient to irrigate a minimum of 80% of the farm simultaneously. In general, lateral pipelines serving smaller areas of the farm shall be designed to supply the water necessary to irrigate 100% of the ground served simultaneously.

Materials used on the project shall be the standard of the industry and shall be in good condition.

- a. **Pipe:** PVC pipe shall be used where operating pressures and terrain conditions allow. Steel or HDPE pipe may be used where terrain, subsurface conditions and pressures dictate. New steel pipe shall be coated and lined with materials approved by State. Bare steel pipe may be used if approved by State where soil conditions are non-corrosive and the lessee anticipates the pipe will be cement mortar lined when head losses or pipe corrosion develop and jeopardize life expectancy of the pipe or pumping capacity.

Pipe sizing shall balance the capital cost of the pipe with the higher energy costs of using smaller pipe. Under no circumstance shall the average head loss per 1000 ft. of pipe exceed 5 ft. where the pipe is supplying circles or irrigation blocks that control the distribution system's operating pressure requirements. In general, the minimum pressure available at a circle pivot or solid set block shall be 50 pound per square inch

(psi) plus the elevation difference between the delivery point and the high point in the field or block being served.

Maximum water velocity in any pipe shall not exceed 10 feet per second (fps).

Pipe shall have a minimum working pressure rating of 125 psi and, where applicable, the wall thickness shall meet or exceed the minimum required for handling without damage.

Pipe pressure class or wall thickness required shall be a minimum of 25 psi above the design operating pressure of the pumping facilities at maximum flow rate and shall assume no head loss occurs along the pipe.

All exposed pipe at wells, pump stations, clusters, filter stations or pivots shall be steel.

Minimum burial depth for all pipe shall be 4 feet where soil conditions allow except for sprinkler lateral pipelines in solid set sprinkler areas.

- b. Pumps:** Well pumps used on the project shall be vertical turbine pumps operating at a maximum speed of 1800 rpm, shall have enclosed impellers, and be provided with either an oil or water lubrication system to prevent bearing wear during pump startup. Discharge heads shall be fabricated steel with a stuffing box for packing.

Booster pumps may be vertical turbine pumps, split case pumps or end suction pumps as appropriate for the capacity and head required.

Pump stations shall be designed with a minimum of 3 pumps where practical to minimize the loss of capacity should a pump fail.

A minimum of one pump at each pump station with multiple pumps shall be provided with a variable frequency drive (VFD). Where a well field exists at least one well pump shall be provided with a VFD. The VFD at each location shall be installed on the pump with the largest capacity.

Maximum design discharge pressures at wells and pump stations shall be at or below 250 psi.

Pumps used shall be selected so at maximum design flow and head conditions they are operating at their best efficiency or at a location to the left of their best efficiency on their head capacity curve.

Pumps operating at 1200 rpm are preferred and 3600 rpm pumps shall only be used in conjunction with close coupled, end suction centrifugal pumps.

- 3. Plan Review:** The lessee shall provide the State with drawings, specifications and submittals containing sufficient information for the State to determine whether the system proposed will deliver the required water at the necessary heads to irrigate the proposed ground reliably, efficiently, and for an appropriate period of time.

4. **Preconstruction Conference:** One or more preconstruction conferences will be held with State personnel to review the plans, specifications, and submittals for the work to be undertaken. No work shall begin until a full and complete set of drawings, specifications and submittals, satisfactory to the DNR, have been approved by the State.

The requirements contained herein are guidelines for design of the irrigation system and may be modified with written approval of the State where site, irrigation equipment, or other conditions, dictate alterations be made. The lessee may request changes to these guidelines to fit their anticipated irrigation needs.

**Compliance:** The State shall have full access to all work for inspection and no work shall be backfilled or otherwise hidden without approval of the State. Inspection of the work by the State will be to ensure the work is in compliance with the approved plans, specifications and submittals. Inspection of the work by the State does not relieve the lessee of responsibility for construction of the facilities in accordance with the approved drawings, specifications and submittals. Should inspections during the construction or subsequent to it identify facilities not constructed in accordance with the drawings, specifications and submittals the lessee shall take immediate action to repair or replace the deficiencies.

### **Supporting Documentation**

- 1) Exhibit 1A for: Water Right(s);
- 2) Exhibit 1C for: Improvement Development Design/Plans:
  - a. Clearwater Contracting LLC Mainline Design
  - b. Irrigation Specialists Circle Design
- 3) Exhibit 1D CWPD DNR Agreement, and engineering drawings for pipeline and pump station
- 4) Exhibit 1E Paterson Project Completion Language
- 5) Exhibit 1F Penstock Pipeline Easements
- 6) Exhibit 1G Map of Premises
- 7) Exhibit 1H Paterson Project Area Map



[illegible]

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

[illegible]

<b>Water Use Measurement Record (to be completed by Lessee)</b>				
mm/dd/yy	Raw Meter Reading	Units of Measure / Multiplier (e.g. x100)	Adjusted Meter Reading in __gallons or __acre-ft (check one)	Peak Flow Rate __gallons/min or __CFS (check one)
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Total Annual Volume in Acre-feet (AF):			Annual Peak Rate in gallons/min or CFS:	
If total water use is not accurate provide an alternate calculation of water use (e.g. pivot run-time data) and describe how meter will be fixed to ensure accurate water use reporting in the future. Include a description of any issues with total water use or why it is less than authorized quantity.				
Comments :				

I THE UNDERSIGNED CERTIFY TO THE BEST OF MY KNOWLEDGE THAT THE INFORMATION CONTAINED HEREIN IS COMPLETE AND ACCURATE.

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

**EXHIBIT 2**  
**Authorized Improvements**

As of the date of execution of this lease, there are no authorized improvements on the Premises.

Lessee owned improvements authorized by State present as of the date of execution of this lease and/or to be placed on Premises per the Plan of Development and Operation:

Description	Location	Completion/ Confirmation Date
Center Pivots: Zimmatic (30)	Locations shown on farm layout map and attached table	
Above ground improvements, including electrical, frost control, irrigation systems, and moving parts including (pumps, boosters, turbines, filters)	Throughout Premises	
Underground irrigation and electrical systems	Throughout Premises	
Roads: Gravel, 10 Miles	Locations shown on road map	

Provided, however, upon expiration or earlier termination of this lease, State shall acquire ownership of the following authorized improvements without compensation to Lessee:

Description	Location
Underground irrigation and electrical systems	Throughout premises
Roads: Gravel, 10 Miles	Locations shown on road map

State-owned improvements authorized by State to be placed in easement areas per the Plan of Development and Operation:

Description	Location	Completion/Confirmation Date
Underground irrigation and electrical systems	Within Easement Nos. 55-095032, 55-095033, 55-095034, 55-095035, Franchise Agreement 92-097393 (and other easements to be determined)	

Lessee-owned improvements authorized by State to be placed in easement areas per the Plan of Development and Operation:

Description	Location	Completion/Confirmation Date
Above ground improvements, including electrical, frost control, irrigation systems, and moving parts including (pumps, boosters, turbines, filters)	Within Easement Nos. 55-095032, 55-095033, 55-095034, 55-095035, Franchise Agreement 92-097393 (and other easements to be determined)	



Irrigation Pivot Information					
Description and Locations					
Pivot ID.	Length in feet	Coverage in acres	Sec	Twp	Rge
36-1W	1348.58	72.8	36	7N	24E
36-2W	855.5	59.64	36	7N	24E
36-3W	1293.67	131.11	36	7N	24E
15-1	1348.58	142.1	15	7N	25E
15-2	1169.67	54.04	15	7N	25E
15-3	1293.67	130.43	15	7N	25E
16-1	1249.5	119.92	16	7N	25E
16-2	1417.58	154.76	16	7N	25E
16-3	1158.58	103.83	16	7N	25E
16-4	1461.75	163.71	16	7N	25E
21-1	1472.75	167.4	21	7N	25E
21-2	1216.33	113.1	21	7N	25E
21-3	1461.75	165.65	21	7N	25E
26-1	1406.58	87.7	26	7N	25E
26-2	1216.33	114.72	26	7N	25E
26-3	1102.75	54.82	26	7N	25E
28-1	1461.75	75.14	28	7N	25E
28-2	1012.58	62.51	28	7N	25E
28-3	990.5	49.41	28	7N	25E
30-1	1282.67	128.07	30	7N	25E
30-2	1293.67	96.64	30	7N	25E
30-3	1282.58	72.19	30	7N	25E
32-1	1326.75	136.54	32	7N	25E
32-2	1092.42	93.85	32	7N	25E
34-1	1136.58	102.22	34	7N	25E
34-3	866.33	61	34	7N	25E
34-2	811.33	53.56	34	7N	25E
34-4	833.42	56.2	34	7N	25E
36-1E	1169.17	51.96	36	7N	25E
36-2E	1439.17	80.08	36	7N	25E
	sum	2955.1			
36-3E (Currently in Lease No. 12- 088961	1556.71	174.77	36	7N	25E
	sum	3129.87			

### **EXHIBIT 3**

#### **Rent Adjustment**

Rent shall be adjusted annually based on the method set forth in this Exhibit.

The following definitions apply:

“Base Rent” is the annual rent in the first year of the lease or, for leases with incremental rent increases due to a defined development period, the first year in which full rent applies. For leases in which a change in Permitted Use is approved under Subsection 1.05, if the change results in a change in rent, Base Rent, for future rent adjustments, is the annual rent established as a result of the change in Permitted Use.

“Base Period Reference Month” is the month and year the lease went into effect or, for leases with incremental increases in rent due to a defined development period, the first month and year in which full rent applies. For leases in which a change in Permitted Use is approved under Subsection 1.05, if the change results in a change to the Base Rent, for future rent adjustments, the Base Period Reference Month will be the first month and year the annual rent established as a result of the change in Permitted Use occurs.

“Escalation Month” is the calendar month immediately following the month the lease went into effect. For example, if the effective date of the lease is January 2014, the Escalation Month is February.

“PPI-FS” is the Producer Price Index for Farm Products, Series Id: WPU01, not seasonally adjusted, published by the U.S. Bureau of Labor Statistics (BLS).

“EMA” is the exponential moving average of the applicable period of PPI-FS data used in the calculation of the Base Period EMA and Escalation Month EMA, defined below. The PPI-FS series used to calculate the EMA shall begin with the index value for January 2000. The exponential moving average formula is as follows:

$$EMA_{current} = \frac{2}{1 + p} \times (PPI-FS_{current} - EMA_{previous}) + EMA_{previous}$$

Where  $p$  is the number of months.

“Base Period EMA” is the EMA, rounded to one decimal, of the PPI-FS values for the 60-month period as of, and including, the Base Period Reference Month.

“Escalation Month EMA” is the EMA, rounded to one decimal, of the most recently published PPI-FS values in the 60-month period as of the current Escalation Month, whether or not any of the values are revised or corrected by the BLS after State has calculated the Adjustment Rate.

“Adjustment Rate” is the percentage change, rounded to two decimals, between the Base Period EMA and the Escalation Month EMA.

Adjusted rent is determined as follows:

1. Determine the Adjustment Rate by calculating the percentage change, rounded to two decimals, between the Base Period EMA and the Escalation Month EMA.
2. Multiply the Base Rent by the Adjustment Rate.
3. Add the product to the Base Rent.

$$\text{Adjusted Rent} = \text{Base Rent} + (\text{Base Rent} \times \text{Adjustment Rate})$$

**Example**

For a lease with a Base Rent of \$500, Base Period Reference Month of January 2015 and an Escalation Month of February.

**2016 Adjustment (actual data)**

Base Period EMA (60 mo. index data through final published value for January 2015)	183.5
Escalation Month EMA (60 mo. index data through January 2016, first published in February 2016)	179.7
Percentage change	-2.07%
Base annual rent	\$500
Change in rent	-10.35
New annual rent	\$489.65

**2018 Adjustment (hypothetical future data)**

Base Period EMA (60 mo. index data through final published value for January 2015)	183.5
Escalation Month EMA (60 mo. index data through January 2018, first published in February 2018)	186.0
Percentage change	1.36%
Base annual rent	\$500
Change in rent	6.80
New annual rent	\$506.80

## **EXHIBIT 4**

### **Encumbrances**

Subject to easement for right of way for county road heretofore granted under Application No. 50-CR3181, for an indefinite term.

Subject to easement for right of way for roads heretofore granted under Application No. 50-40374 and 50-094408, for an indefinite term.

Subject to easement for right of way for overhead transmission line heretofore granted under Application No. 50-040558, for an indefinite term.

Subject to easement for right of way for overhead and buried power lines heretofore granted under Application No. 50-089110, for an indefinite term.

Subject to the rights of the holder of Department of Natural Resources Water Rights granted under File Nos. 78-000158, 78-000185, 78-000628, and 78-000743, granted on June 14, 1977, April 22, 1997, December 29, 1988, and December 7, 1987 respectively.